

D I G E S T  
O F  
H I N D U L A W

ON  
CONTRACTS AND SUCCESSIONS;

WITH A COMMENTARY

B Y

*JAGANNÁTHA TERCAPANCHÁNANA:*

TRANSLATED FROM THE

ORIGINAL SANSKRIT.

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# BOOK V.

## ON INHERITANCES.

### CHAPTER I.

#### ON PARTITION OF PATRIMONY.

##### SECTION I.

###### ON SUCCESSION IN GENERAL.

###### ARTICLE I.

###### ON PROPERTY; AND ON THE TRANSFER OF IT.

###### I.

**N**A'REDA:—THAT title of law, under which a distribution of the paternal estate is instituted by sons, has been called by the wise partition of heritage.

"UNDER which;" under which title of law. "Is instituted;" is made.  
The *Retnácarā*.

WHAT descends from the father, is "paternal;" and that is called property devolving *on sons* by the death of the father. Both expressions, "pa-

ternal estate" and "by sons," are merely illustrative of relation or consanguinity; for the term, inheritance, or partition of heritage, is also used to signify a distribution of property among any relatives. Accordingly NĀREDA also, having premised the forensick term partition of heritage, notices the distribution of property left by the mother and the rest. So MENU likewise, premising the same title, without employing the word father or other limited designation, propounds the distribution of property in every relation.

JIMUTAVAHANA.

## II.

MENU:—THUS has been declared to you the law, abounding in the purest affection, for the conduct of man and wife, together with the practice of raising up offspring to a husband of the servile class on failure of issue by him begotten: learn now the law of inheritance.

"ESTATE" (I); property. "Paternal;" obtained through the relation of the son to the father.

RACHUNANDANA.

CONSEQUENTLY that property, on which a distribution or partition of a vested right, depending on relation or consanguinity, may be instituted, is named distributed heritage, a title of jurisprudence. In short, heritage is a title of law. Since the merits of opposite pleas set up by a plaintiff and defendant ("this allotment of shares is improper; this allotment of shares is equitable;") may be determined under the title of heritage, which comprehends the allotment of shares, that title of judicial procedure is taken in a literal sense, "inheritance or heritage." Since this word, and the term, which occurs in the text of MENU (Book II, Chapter I<sup>cv</sup>. II 4. and which term has been there explained "law of inheritance"), may signify the portable heritage, because a rule expresses, that neuter derivatives from active words are similar to nouns denoting substance, or because the term is derived in the passive form, there is no objection to this interpretation. Thus some lawyers expound the terms.

SINCE this title of jurisprudence has not been expressly distinguished by that name, the obvious design of the writer would be subverted; for the other seventeen denominations, which occur in the text of MENU, namely debt and the rest, nonpayment of wages, larceny and the rest, bear an abstract sense, whilst one denomination only would signify the thing, which possesses the abstract nature. The title of loan and payment comprises the several abstract properties, which constitute a creditor, and so forth, as has been already explained. By the rule quoted, grammarians, who contend that action is single, acknowledge its similarity to substance, and thereby permit the use of such terms in the dual and plural numbers. Words of this description do not denote substance. If they did, there could be no inflection with a neuter sense, since the derivatives would not bear the abstract sense of the verb. The same must be universally admitted on the supposition of a passive inflection. If that be questioned, then *the text must be thus paraphrased*: on whatever property, a partition or distribution of the patrimony is instituted, such distribution of that property (for the connexion of the correlatives is positive;) is a title of jurisprudence called partition of heritage. In a word, the partition, which takes place in respect of partible heritage, alone constitutes the forensick title denominated partition of heritage.

Is not partition of heritage (*dáyabhágā*) termed distribution of inheritance (*dáyabbágā viblágā*)? What use is there in such an incumbered definition? yet there is no vain repetition; for it conveys the meaning of the term (*dáyabbágā*) inheritance or partition of heritage. *The answer is*; no such objection can be made, since the legislative independence of the sage must be acknowledged. Or so much is added to aid the perfect comprehension of the sense conveyed by the term heritage; for, since the partition, which takes place in respect of partible property devolving from a father on his sons, is called partition of heritage, it follows, that such property is (*dáya*) heritage: and, since the term heritage is also used to signify property, of which no partition is made, participation, not partition, is strictly intended.

SOME consider the relative as employed in the seventh case substituted for  
the

the first. Consequently the sense is, "that partition, which is instituted, is partition of heritage." But others read, "yat tu or yas tu, but that," instead of "yatra, where or in which," and interpret the text similarly. The learned descendants of learned ancestors take the relative in the seventh case with a causal sense; the subject is the title of law which consists in partition; and the word partition, which occurs in the text, is intended to justify distribution by a causal derivation of the term: consequently the sense is, 'that title of law, whereof partition is the element, and which is established as the cause and ground of a distribution by lots or the like, is called partition of heritage.' Partition therefore, as a title of law, bears an abstract sense; and this well reasoned opinion is unexceptionable. Again; the partition of heritage, or the heritage which is divided (according to the different opinions mentioned), is signified by the term inheritance; and that constitutes the title of judicial procedure. Such is the interpretation of RAGHUNANDANA, JIMUTAVAHANA and the rest.

BUT, in fact, that distribution, participation, or ownership of the paternal estate (or wealth descending from the father in consequence of his death or the like, or, in other words, property of the deceased father,) which is established or acknowledged by the sons to vest in a certain owner, is a term of law relative to ownership. Consequently, from the relation of the term, or ownership itself being the title of law, the property of the estate, which belonged to a deceased owner, being vested in another by reason of consanguinity, is inheritance.

Or the relative may be expressed in the seventh case with the sense of prop or support; as in the example, "he resides with his preceptor" and partition signifies allotment. Consequently the sense is, that ownership of heritage, in right of which sons make an allotment, is a title of law named inheritance. Owners, i.e. the support of an allotment of the heritage, is a cause mentioned fully by way of illustration. Hence, even the ownership of heritage, which is not divided, is unexceptionably considered as inheritance: and it is the text of BAUDHA'YANA, the rules of VISHNU (III and CCCCLXVII) &c. Other texts are truly explanatory of inheritance. This has been fully discussed.

If partition, as a term synonymous with division, signify the separation of the integrant parts of the thing divided, would not the thing be destroyed? If it signify disunion of *interests among* the brethren in respect of each other's property, no separation could be made of property connected with the property of another brother, even though the *individual* right be ascertained. *To this it may be answered,* the act of ascertaining the *individual* right, or the ascertainment of *a separate title*, is partition or division; for, on the death of the father, his right is devested, and a title vests in his son or other heir; and in the case of two or more sons, each son has a several title to that property, which shall *thereafter* be received by him: but, since that is absolutely invisible, and cannot be perceived by the eyes or other senses, it is ascertained by lots or the like, and argued from logical inference alone. That solely constitutes ascertainment; or the consequent act, such as distribution by casting lots or the like, is signified by the term partition.

BUT, if a single female slave, or one cow or the like, be the property left by the father, what should be the mode of proceeding, since a distribution by lots is not possible? *Vrihaspati* has provided for this case (CCCLXVI 5). Such property must be apportioned according to the reason of the law, else it would be rendered useless. In the case supposed, all the heirs have a title to the single female slave. For instance; on the death of one, who leaves five sons, the eldest son has, in the first place, a right to employ that female slave during six days; and afterwards the next born, during other six days. In this and other modes their several rights may be adjusted; or lots may be cast after executing a document for the regulation of periods.

Is the title to that female slave, which the eldest son possessed, devested after the expiration of those six days, or does it still subsist? On this doubt some lawyers remark, that many titles or proprietary rights over an individual, but which exist partially in respect of time,\* were previously vested in the sons: these *rights* must be considered as vesting in those several persons, one after the other, at certain periods, which shall be subsequently settled by an umpire. In that case the award of such an umpire constitutes the se-

\* A term of logick, *avayavitti*, by which I understand partial existence. It is distinguished into predicates partial in respect of place, and partial in respect of time. T.

paration of those several rights: and here the expression " were previously vested," obviates the supposition of repeated lapse and revival of property. Again; a right to that female slave subsists, connected with the ascertainment, that it shall subsist *in full force* on those several days as arded by the umpire: and, since this right is described as partially existent in respect of time, it does not subsist *in full force* after the close of those several periods, like the faded colour of a jar, like class and sort, such as the generalizing of names or the like, *which may vary with the change of name*; and like the temporary absence of a quality partially existent. Hence, after the expiration of the several periods, the coparcener, *whose turn is past*, may not employ the female slave. Such is the opinion of JIMUTAVAHANA.

Is property included in the seven categories, substance and the rest, or is it distinct therefrom? To this VACHESPATI BHATTACHARYA, grounding his opinion on the *Mimamsa* philosophy, replies, property is a certain faculty\* subsisting in the several substances; but according to the *Nyaya* philosophy, he adds, 'ownership is a relation between cause and effect, attached to the owner who is predicated of particular substances, and subsisting in the substance by connexion with the predicate.' That alone is right; propriety consists not in the right of aliening at pleasure, nor is it a consequence simply deduced from positive law, which declares the right of aliening at pleasure, for that would be an identical inference, † in this manner; if there be property, then a man may alienate at pleasure, and property is the right of aliening at pleasure, or the law declares a power of aliening at pleasure that, which is possessed as property, here again is a confusion of premises and consequence. Hence SIRO'MENI says in the *Padart'ba tatwa*, propriety is a distinct category. He considers it as a category distinct from the seven predicaments, because there is no argument, by which it can be established to be a faculty, nor any argument, by which it can be placed under quality and the rest. It exists in substance, such as gold, silver, cattle and the like. \*

\* *Samsara*, faculty, enumerated by logicians among qualities as, faculty of rapid motion, retention of ideas, or faculty of recollection, faculty of continuing the motions necessary to life, and many others. It is this faculty, but it must be taken in a limited sense.

† *Nyaya*, identical, a proposition not legitimate, because the predicate is the same with the subject; or an inference not legitimate, because the conclusion rests on itself, or because the effect is referred to itself as a cause. T.

BUT SRI' CR̄IŚIṄA TERC'ALANCA'RĀ holds, that, as propriety abides in substance, so it does in quality also. For instance ; the precept, " consecrate a black bull," and similar phrases, suggest the consecration of a bull, to which the quality of blackness is an attribute. Now consecration cannot take place without property ; therefore property is acknowledged in respect of that, to which the quality is attributed : and consequently property is proved to exist in the accident or black colour, as well as in the subject or bull. As it is said, the father is arrived accompanied by his son ; *in which example arrival is affirmed both of the accident and subject.*

THAT is wrong ; for propriety in no other instance appears to abide in quality. In the example proposed, " consecrate a black bull," as in the phrase, " a man carrying a staff and wearing earrings ;" there is no difficulty in apprehending the consecration of a bull, with which the quality of blackness is contemporary. Consequently, the consecration of the bull, and the contemporary existence of the quality of blackness in the bull, are required by the precept.\*

LOGICIANS, admitting the numerosity of the bull changed by growth, diminution, and the like (*or in other words, denying the permanent identity of a body subject to change*), and apprehending the consequent difficulty from establishing various property, affirm ownership to be vested in the man ; and the predicate, consisting in the connexion of essential properties, is acknowledged to adhere to the bull, which may be of various colours.

WHETHER property inhere in the thing, or ownership in the man, what is the cause of property ? VA'CHESPATI BHATTĀ'CHA'RĀ replies, " acquisition is the sole cause of property : and that acquisition is the act of the acquirer, *earning wealth in such modes as are ordained by the law*. This, again, is of three sorts : in some instances it is corporeal, as agriculture, commerce or the like ; in others, it is verbal, as teaching the sacred sciences and the rest ; in others again, it consists of mental design or volition, as acceptance of gift, embezzlement of deposits and so forth. But, in the

\* Men of the servile class are enjoined to dismiss black (literally blue) bulls on certain occasions. The higher classes, on the same occasions, dismiss bulls of a reddish white colour. T.

case of heritage, since a law declares, that "in some instances acquisition is by birth," and the text of *GO'TAMA* expresses, "even by birth alone a man may gain ownership," the birth of sons and the rest constitutes acquisition, through the medium of the connexion of filiation: that also is corporeal.'

ACQUISITION of various kinds becomes the cause of property *single in its kind*, as grass, flint, or touchwood,\* and the igniting gem are causes of fire. As flame may be produced from an igniting gem even without grass, though fire be uniform in its kind, or without the gem or grass, from very inflammable wood, and consequently grass and the rest become causes of fire *single in its kind*; so do agriculture and the rest become causes of property *single in its kind*. Thus grain and the like first become the property of him, who raises them; and next of the purchaser, donee, or the like; in these cases, the property of the original owner is only divested by his own volition; and that volition proceeds from the acceptance of a price, from the wish of moral purity or the like, from service and so forth, or from solicitude for the accomplishment of his purpose. In these cases, property vests in the purchaser through the payment of the price and acceptance of the chattel transferred: it vests in the donee solely through acceptance of the chattel; for no otherwise does he acquire it: it vests in servants and the rest, through the medium of the master's volition, in consequence of the performance of certain work; or the acceptance of the money may be the sole origin of property vesting in servants and the rest. In case of inheritance, birth alone is cause of property; and that birth is a particular relation of body, not a relation taking place at the first instant of procreation.

MAY not a son have property in the wealth of a living parent? Let it not be answered, this is admissible; for it would contradict the law: *DE'VALA* (V) declares, that, while the father lives, his sons have no ownership of his estate. If this be proposed, the argument is denied; *DE'VALA* declaring the want of ownership while a faultless father is living, in effect assigns the death of the father as a *mediate* cause of property vesting in his

\* The word *araśi* is subsequently explained a particular sort of wood, and should signify very inflammable wood, from which fire is obtained by attrition; but the same term is frequently used for a flint. T.

sons, by propounding the term " faultless," he suggests the degradation of a father is a *mediate cause* of transferring property to the son. *But*, since both these are inconsequent; since it is difficult to prove the cause from their producing a divesture of property, and since it is a false conclusion in logick,\* because the same may be truly assigned as the cause of another effect; therefore, omitting these, the *immediate cause* is in effect assigned in the divesture of the father's property.

THAT being the case, would not the propriety of the father's estate repeatedly vest every instant in the son, after the death of his father, for the divesture of the father's property, and filiation, or relation of the son to the father subsist continually? Let it not be answered, that there is no objection, since the cause may be assigned in the divesture of the father's property, which may be supposed to take place at the moment of his son's birth. The possible title of the son to wealth bestowed on priests by the father in his lifetime would be imperfectly barred. If this be alleged, the answer is, since property vests in the purchaser through the price settled, and through his acceptance of the bargain, even though the chattel be not delivered; and in the donee through his acceptance of the gift; property is established to be an impediment to concurrent property, hence there could be no property arising every instant, and rolling like the waves of a stream: and the chattel being delivered by the father, no right is vested in the son, since it is resisted by the father's declared will, "this shall belong to the priest." In like manner, even in the particular case of usucaption, when the father suffers land to be possessed by a stranger during twenty years, since the property is devested, no right is vested in the son, for property, dependent on relation to the father, is resisted by adverse possession suffered by that father. Again, since the title of a daughter and the like is resisted by the intervening title of a son and the rest, which is dependent on affinity, daughters and the rest have no right to the patrimony, if a son be living. No other cause of succession should be established besides the divesture

\* *Anjarkha fddh*, in logick, disproves a cause. Cause is what necessarily precedes, but every thing, which has preceded, is not the cause of the event considered. in the definition of cause, it is therefore a requisite condition, (in the language of *Hindoo* dialects) that it be not true of something else. This may be best understood from the five heads in which it branches. 1st that, by which the more immediate cause is inferred, or 2d. by which it becomes precipitate (as the atmosphere, or the colour of a thing), 3d. what is already assumed as the cause of any fact or event, 4th what is assumed as the cause of the immediate cause; 5th. what did not necessarily precede the event considered. T

of the father's property; and the text of DE'VALA is a lax expression of the consequence, when a cause subsists for such an effect. For instance; if no property vest in the son, while the father's title subsists, then surely a son has no ownership, while the father is living.

JIMUTAVAHANA affirms, that acceptance is not the cause of property; were it so, the accepter, performing the act which confers property, would be the giver, *which is absurd*: but gift alone, like the annihilation of the party's own property, becomes the cause, by which the property of another is produced. Nor should it be argued, that receipt is acceptance; that acceptance consists in making that his own, which was not his own; that this operation is an act, and that act is the receipt of the thing given: before receipt, the chattel was evidently not his own, but when receipt has past, it has become his own; receipt alone is therefore the cause of property. For to this it may be replied, the title, effected by acceptance, consists in the power of aliening at pleasure; because, a gift being made to an absent donee, he does not appropriate it at pleasure, even though property be vested in him, since he is ignorant of his right. When the gift becomes known to him, he then knows, "this is mine;" that alone is acceptance: afterward, knowing it to be his own, he appropriates it at pleasure, without needing the assent of another. Nor should it be alleged, that acceptance being a mode of acquisition, as recorded in the text, "by sacrifice, by teaching the scripture and by acceptance of gifts, a priest may earn wealth," it follows that acceptance generates property. "Earn" does not here signify generate property, but induce an act, which does generate property, such as the surrendry on the part of the giver. For, as the priest, by interpreting the Veda or assisting another to sacrifice, disposes the giver to bestow a present, and obtains the surrendry from him, so likewise, since the giver entertains the notion, that the priest will accept it, he, who yields future acceptance connected with that notion, effects the surrendry from the giver: else, that notion could not exist, since there would appear no object of it. May not "earn" signify generate property? that sacrifice and the rest generate property, is admitted; should it not be likewise affirmed, that acceptance, howsoever involuntary, generates property? Even the accepter would be the giver; for the donor is he, who produces such an effect as the investiture of transferred property, and that

description would be applicable to the donee, *which is absurd.* Let it not be alleged, that the act of the giver is not the efficient cause of property vested in a person other than the former owner, because there is no authority for considering gift as the efficient cause of property vested in another. MENU declares donation alone to be a cause of property vested in the donee; "gift is the cause of ownership." Such is the opinion of JIMUTAVAHANA.

VACHESPATI BHATTACHARYA holds, that MENU mentions gift as contributing to the property vested in the donee: and that, through the divesture of the property held by the former owner. But acceptance is a cause of property, under the authority of the text cited by SULAPANI (and quoted in the preceding comment). Sacrifice and teaching the Veda, mediately causing property, are truly means of acquisition: but future acceptance cannot be a mode of acquisition, because there can be no actual object considered; and the foregoing argument is thus weakened. Accordingly, should a donary be given, intended for priests in general, any one priest may possess it; else, since there is no ground for selection, should one take a chattel owned by all priests, he must distribute it to all, like joint-property. Nor can it be established, that property vests originally in him alone, who subsequently takes it. Of this there is no proof. Nor should it be objected, that the seizure of a present intended for a priest residing at Casi would be no theft. This may be unexceptionably held admissible. Or terming it seizure of another's property, there is no objection to consider as theft the seizure of a chattel intended to become the property of another, as well as the seizure of a chattel actually possessed as property by another.

DHAUMYA :—ON failure of the proper object, how shall a present be disposed of, which was bestowed on an absent person? Let it be delivered to kinsmen sprung from the same original stock, or, on failure of these, to his distant kindred.

FROM this text, which enacts, that a chattel given away, even though it have not been accepted, must be delivered to the kinsmen of the person intended, it appears, that property is conferred by mere gift without acceptance:

tance , else, why should the kinsmen of the person intended be alone mentioned ? Consider the reverse as true . for, did property vest in the person intended, through gift alone without acceptance, then it must of course be taken by a son or other heir, because it has become *a part of the patrimony* ; and for what purpose has the text of DHAUMYA been propounded ? A present, made for the benefit of a deceased Brahmana erroneously supposed to be living, must be delivered to his son or other heir : is not the text designed to convey this precept ? What follows from this , for the argument supposes, that property was vested before acceptance. Therefore, should a present not be delivered to him, for whom it was intended, the law shows the gift to be imperfect hence it must be delivered to complete the gift In answer to the question, 'to whom should it be delivered if he died before or after the donation,' the text of DHAUMYA ordains, that it shall be delivered to the son or other heir, in like manner as donaries or the like, given in honour of deities, must be delivered to priests and the rest.

SINCE the text, cited in the *Malamdasa tatwa*,\* declares the giver guilty of theft, if gold given, but not delivered, be lost by his fault and not made good ; and since theft consists in the seizure of another's chattel, a chattel given away becomes the chattel of another even before his acceptance : being acknowledged to belong to the donee, surely it must evidently follow, that property was vested in him. It is so after the chattel has been given . but if it immediately become the property of the donee, then the seizure of it would be truly a theft under the text, which describes theft in general ; and the enunciation of this text would be superfluous. Consequently this text intimates a figurative theft, considering a chattel surrendered for the benefit of another, though not yet accepted by him, as similar to property vested in another. Admitting the property of the donee, since the giver has not seized, but only lost, the chattel, the definition of real theft is inapplicable even according to your opinion, therefore seizure and theft, in this place, are both figurative.

If any thing have been given away by a donor for the benefit of a priest, it is ordained, that it shall be delivered to his sons, should the donee die

\* See Book I, Ch. II, Section III, Art. III

before delivery ; shall it be delivered to the son alone, or to all the sons and grandsons in the male and female line, and the rest ? Or is the object attained by delivering it to the sons of daughters and the rest, even though a son of the donee be living ? To this question it is answered, the donor must deliver it, in the order of proximity, to the remoter heirs respectively on failure of nearer heirs, as suggested by the text of DHAUMYA : and that order is similar to the sequence of inheritance.

Is not the sequence different from the series ordained in the case of inheritance, since the text states this order, "kinsmen sprung from the same original stock, and distant kindred :" this order alone should therefore be admitted ; in the first place it should be delivered to any one kinsman sprung from the same original stock ; next, on failure of such, to distant kindred ? No ; for that sequence is also unacknowledged by the text of NAREDA (Book I, v. CCXXX). Consequently the order of inheritance should alone be admitted ; for this chattel is similar to one, which had become the father's property. In the first place, it should be delivered to the son, grandson, or great grandson ; on failure of these, to the widow. According to the opinion of those, who contend for property vested before acceptance, this must certainly be established. •

If the donor delivered it to one son alone, and other sons be living ; then, since the accepter alone made the acquisition, the rest would have no title ; or even though all should have a title grounded on the original intention in favour of the father, he, to whom the chattel is delivered, would share a double portion, because he gained the property. Let it not be said, that this is admissible : it contradicts JIMUTAVAHANA and the rest ; for according to his opinion, property is acknowledged prior to acceptance ; and all the sons shall therefore receive equal shares, since that chattel is a part of the patrimony. If this be proposed, the answer is, he shall be compelled to give it up, if he receive such a chattel without distributing to his brothers their shares, in like manner as when such a chattel is taken by a stranger. But if he fraudulently take it as a present to himself not considering it as a gift to his father, it is similar to a thing given to many persons, neglected by the rest, and received by one.

HERE it should be observed, that the donor ought to deliver the present to all the sons jointly; else the object of the gift would not be attained. Hence, he should not deliver it to a daughter's son, if a son be living. In like manner, should a stranger seize, on the road, a chattel sent by one person to another, he shall be punished as a robber, and the chattel must be recoverable from the thief by him, for whom it was intended.

CONSEQUENTLY, in the case of gift, acceptance alone generates property. Accordingly an inanimate being can have no property, through the want of the requisite acts, from the effort, with which an acquisition originates, until *final acceptance*. But according to the opinion of those, who maintain property vested by mere gift *without acceptance*, a thing, which is given to a deity, whose essence is a text of scripture,\* becomes the property of that deity. Let it not be asked by way of objection, what is the conclusion of those, who maintain the animation of deities? The apparent difficulty is reconciled, although deities, according to this opinion, be animated, by not admitting their acceptance of gifts. In like manner, insects and the rest have no property in water and other things consecrated for the benefit of all beings.

SURRENDARY, intended to convey property to another, and attended by the effect of annihilating the property of the party himself, is gift. The accepter is not the agent in that act; therefore he is not the giver (*an absurd consequence objected by JIMU'TAVAHANA*). Let it not be said, the literal sense of the verb "give" is obtained by including in it the consequence produced of creating property vested in another. That is prolix; for the definition of consequence or effect is prolix in comparison with that of intention or special object. Nor should it be objected, that, if this be the case, it should be said, "attended with the object of annihilating his own property;" why insert "effect"? Were it so, consequence not being included in the sense of the term, "give", would be an intransitive verb; since it could have no subject suffering the effect denoted by the abstract sense of the verb.† Nor should it be objected, that there is no ground for selection; the effect might

\* *Mensis* I do not well understand this notion of divinity, unless it be meant, that subordinate deities are merely personified attributes of the supreme being, T.

† Definition of transitive verbs."

be affirmed either of the giver's own property annihilated, or of another's property *created*. The law showing, that gift annihilates the giver's own property, there is a ground for selection. Nor should it be alleged, that the words of MENU, "gift is a cause of ownership," form a law, which shows the production of property vested in another. The difficulty is removed by inferring the production of property vested in another, through the medium of the divesture of property held by the former owner. Or be it so; the subject may consist solely in the object; like the phrase, 'he knows the jar.' Consequently the verb "give" signifies *act and effect of volition*, to which the previous annihilation of the donor's own property is attributive, and which intends the *conveyance of property to another*. Or it signifies surrendry effecting the investiture of property in another, after annihilating the rights of the former owner. Accordingly the phrase, "he gives a cow," appears to signify, 'cancelling his own property, he makes the cow appertain to another.' The accepter is not the agent in such a gift; for he is that other person, and he does not cancel the former property: and *thus* "cause of ownership," in the text of MENU, bears a literal sense. Hence the objection, that gift, as mentioned by MENU, would occur in the case of neglect occasioning the property of another through the medium of annihilating the party's own title, is obviated; for, "in this case, neglect becomes an immediate cause of property vested in another. Even in the case of sale and the like, there is no objection to this use of the verb; 'having received the price, he gives the cow.' In like manner the verb "give" is properly used for the payment and advance of debts;" "if the time of payment be not expressed, the debt shall be paid (*literally given*) on demand;" (Book I, v. CLXVI). and, "let no man lend (*literally give*) as a loan) any thing to women, to slaves, or to children (Book I, v. VIII)." But in the phrase "give food to a twice-born man," and in similar expressions, the verb signifies gift alone; and that may be known from the epithet or *circumstance descriptive of a moral purpose*, not indicating sale and the like. From the insertion of surrendry or relinquishment *in the definition of gift*, the phrase, "he gives or leaves his estate to his sons," cannot be used when a father dies, or becomes an anchoret. Yet, if the father at the point of death, or becoming an anchoret, declares "so much wealth is left by me, let it belong to my sons," it may in that case be said, he died or became an anchoret

anchoret after giving or bequeathing all his property to his sons. Accordingly, in stating the etymology of *dayab/aga* or inheritance, JI'MU'TA-VAHANA and others thus derive the word *daya*, heritage; that, which is given or bequeathed (*diyate*). This, and the phrase "he gives or bequeaths," are figurative, for they are similar to the investiture of property in another after cancelling the property of the former owner, who is deceased naturally or civilly there is not in that case a surrendry made by the deceased and the rest RAGHUNANDAVA observes, there was not, on the part of the deceased, a surrendry, effecting the annihilation of his own property, and consisting in his declared will, "this is no longer mine" The same author explains surrendry, declared will, and that signifies desire or intention \* All this has been stated in conformity with the opinion of VACHESPATI BHATTACHARYA

It differs from the opinion of JIMUTAVĀHANA in maintaining, that the right to a chattel, which is given, is not vested before acceptance or approbation this is deduced from minute reasoning, and the argument is equal Consequently assent is signified by the term approbation, as in the phrase, 'philosophers of the *nāyāvāca* school acknowledge a supreme ruler different from the deities of mythology' The phrase, he accepts the chattel, signifies he assents to the property conferred on him by the donation, and does not neglect or refuse it It may be also affirmed, that acceptance is a mode of acquisition, through the medium of request, but in the case of an unsolicited gain, there is no difficulty even though acceptance be not considered as acquisition

GRANTING this, may not a man appropriate at pleasure an offering made by any person on the bank of the Ganges, without a declared acceptance in this form, "this shall be mine," but merely thinking "this is mine?" What obligation is there? Or, if I *mean* to *sueg*, the appropriation of anything made by another, without previous acceptance, is indirectly forbidden by a text, "acceptance should be avoided on the bank of the river." This let us be *cautiously* explained.

\* The word *testament* occurs frequently and seems also to be the nearest term for *testament*; P. 1, 181<sup>a</sup> & 181<sup>b</sup> 112 113 & 114 of *Hylas* T.

PROPERTY, dependent on relation to the former owner, in that chattel, of which the ownership has expired, is heritage, a word deviating from its etymon. So JIMUTAVAHANA defines heritage. The condition, "dependent on relation to the former owner," obviates the possible use of the word heritage in speaking of gift and the like. That relation, originating from birth, study, marriage and so forth, is filiation, fellowship in study, conjugal union, or the like. The phrase, "of which the ownership has expired," obviates the use of the term heritage under the texts which describe the concurrent property of the wife during the life of her husband (CCCCXV &c.)

SRI KRISHNA TERCA LANCA RAA.

SINCE property resists concurrent property, how can a wife have any title to the estate of her living husband? The objection is ill founded; for, acknowledging the death of a father and so forth to become severally causes of property immediately subsequent, he does not admit the general resistance of one property to another. But, according to that opinion, it may be affirmed, that marriage would unavoidably resist a property which was different from that of such a wife, and which would annihilate her former property. VACHESPATI BHATTACHARYA does not admit a property then vested in the wife. This will be subsequently explained. According to his opinion the words, "of which the ownership has expired," need not be inserted.

Such is heritage (*dāya*); and of this a partition (*bbāga*), distribution, right, ownership or property, must be understood according to the various opinions, as already noticed: and the verb *bbaj*, divide, occurs in the text of YAJNYAWALCYA (CXIV) with the sense of right or title. Accordingly MENU also expresses, "learn the law of inheritance (*dāyabbāga*)."  
Having declared the simple right of succession (Ch. 9, v. 104), and noticed, cohabitation of partners (from v. 105 to v. 111); he proceeds to the mention of partition (v. 111). In those texts, "after the death of the mother (v. 104)" alludes to the several property of the mother; accordingly CULUCABHATTA remarks on the expression "paternal estate," that sons also succeed to the maternal estate. BAUDHA YANA also simply declares the title of sons to succeed to the paternal estate (III).

JI'MU'TAVA'HANA remarks, that the casting of lots and the like, for the several rights of two or more sons to their respective portions (which rights were *previously* unascertained, since nothing determined that such a chattel belonged to such a person;) ascertains the severalty, *which may be expressed in these words*, "this wealth belongs to this man:" that ascertainment of severalty, namely the casting of lots or the like, is partition. But RAGHUNANDANA says, after the divesture of property predicated of the sons collectively, in respect of the collective wealth which devolves on them after the death of their father, property is severally predicated of each son in respect of each chattel, *as determined by lots or the like:* or the casting of lots, or other act, which produces that consequence, is partition of heritage. JI'MU'TAVA'HANA conceives, that after the decease of the father, and after the consequent divesture of his property, a right is vested in his sons, by reason of the connexion of filiation and so forth; and this follows from the text of BAUDHA'YANA. Since the property of the sons can only arise after the divesture of their father's property, such divesture *is necessarily inferred*: now there is no argument to prove the divesture of the co-ordinate property of sons, and rise of another *several* property; although the texts, which notice partition, do suggest that *several property*, it would be difficult to establish the failure of one property and rise of another: therefore the property of each is established in that, which will become his by lot; for his right, being imperceptible to the senses, cannot be ascertained, otherwise than by casting of lots: this alone constitutes partition. But RAGHUNANDANA thinks, that the casting of lots must be explained by logical inference: as fire is ascertained from smoke by this argument, "without fire there can be no smoke; for what else causes it?" so, without vested property, there can be no casting of lots in the name of the proprietor; for there is no *else* proof of it. In the case of ordeal, as a natural efficacy is attributed to fire by this rule, "fire burns the guilty alone, not the innocent;" so, attributing a natural efficacy to lots thrown, should it not be established, that the lot falls to each for that, of which he had the property? No; for in the case of trial by ordeal, the texts of sages establish, that the innocent remain unburnt; but, in this instance, there are no grounds for the induction. If it may be said, that is established to avoid tedious difficulties, still it is again a tedious difficulty to prove such natural efficacy attributable to lots and the rest. It remains to elucidate if *any* of *all the lots* in the whole estate, (which might

might be supposed; since their connexion was equal when the father deceased,) it is most difficult to establish an impediment to such property, because that other individual property is previously negative\* or has not yet existed.

AGAIN; it is universally agreed, that the acquirer shall have two shares, and any other heir one share, of what has been acquired by a brother employing one of two horses left by his father. On partition of the original wealth, should that horse fall by lot to him, who acquired *this new wealth*, then, according to the opinion of those who contend for distributive property severally vested in each individual during coparcenary, that horse already belonged to the acquirer; why then should another brother participate in the wealth so acquired by him? But if the horse be obtained by a parcerne other than the acquirer, the wealth so acquired ought to be equally divided; for it is gained by the exertion of one parcerne and by the labour of a horse belonging to the other. On this SRI CRISHNA TERCALANCARA remarks, that there is nothing inconsistent with practice, because the phrase, "employment of common property," intends only wealth, of which the *several* property is undetermined. Of these two opinions, that which is maintained by RA-GHUNANDANA, who contends for co-ordinate property, is confirmed by HERINAT'HA, by the author of the *Mitacshara*, by VACHESPATI MISRA, BHAVADEVA and others. This very opinion is indirectly admitted even by SRI CRISHNA TERCALANCARA.

SHOULD any one brother sell the servile slave on a day which falls within his allotment (CCCLXVI. 5), may the purchaser afterwards require the labour of that slave on the days allotted to other brothers? To this question the answer is, when a sale is made, the purchaser has a property similar to that, which the vendor enjoyed: hence the purchaser can only obtain the labour of the slave on those days of each month, which were allotted to the vendor in proportion to his share. Accordingly, when a principality is sold, the prince has property entitling him to receive revenue; but the property of the occupant, entitling him to enjoy the produce of the land, subsists in full force:

\* Pragabbava: antecedent privation. Privation is relative or absolute; the last is of three sorts: antecedent privation, affirmed of what has not yet been; annihilation, affirmed of what has ceased to be; utter privation, affirmed of that, which now is not, and in which past or future existence is not considered. T.

when the produce is sold by the occupant, the purchaser acquires a right to enjoy it, but the king retains his title to receive revenue. Hence he, who cultivates land, for which he pays revenue to the king, and who enjoys the produce obtained from that land, is acknowledged to possess property as cultivator of the soil; if he sell the land, the purchaser acquires similar property, in right of which he enjoys the produce after paying revenue to the king. The cultivator is not destitute of ownership; for that would be inconsistent with practice. Consequently, various concurrent rights to one and the same thing being admitted, it must be established, that property is an impediment to other property of the same nature. This has been also stated by SRI KRISHNA TERCALANCA RA in these words; "for those two concurrent rights of the same nature are incompatible."

## ARTICLE II.

## ON SUCCESSION OF SONS.

## III.

BAUDHAYANA:—MALE issue by males as far as the third degree being left; the estate of the father, surely, must go to them.\*

This text of BAUDHAYANA propounds the succession of sons to their father's estate; and that succession only takes place after their father's demise; for MENU declares, that sons may divide the paternal estate after the death of the father.

## IV.

MENU:—AFTER the death of the father and the mother, the brothers, being assembled, may divide among themselves, in equal shares, the paternal and maternal estate; but they have no power over it, while their parents live, unless the father choose to distribute it.

HERE their title is equal; that is, a deduction of a twentieth part or the like is allowed by other brothers, through affection and to preserve due respect, because elder brothers and the rest are venerable. CHANDE SWARA, CULUCABHATTA, VACHESPATI MISRA, JIMUTAVAHANA, RAGHUNANDANA and the rest observe, by the term "divide," partition is intended; from ordaining partition after the death of the father, it follows that ownership vests after his death; else why should they not divide the estate earlier? Equal partition is here mentioned, supposing an eldest brother who is deficient in virtue, or who does not claim a deduction; for the

\* See the context at v. CCCXCVII.

deduction of a twentieth part concerns an eldest brother endued with virtue, or intends an eldest brother claiming that deduction. Such is their meaning. UDAYACARĀ's remarks on the word 'equal,' that an equal partition should be made, after first deducting a twentieth part, *for the eldest brother.* HELĀYUDHA and the Pārijāta read 'saba, with, instead of *samam*, equal; and "with" is expounded in the Pārijāta, mutually or among themselves.

"PATERNAL" or parental; this derivative from a term expressive of both father and mother (the last being understood) signifies paternal and maternal. It is so expounded by HELĀYUDHA, CHANDEŚWARA, VA-CHESPATI, BHAVADEVA and others; and CULLUCABHATTA entertains the same notion. A distinction in regard to the succession of sons to their mother's property will be subsequently mentioned. "Others, says CHANDEŚWARA, consider "paternal" or parental as also signifying definitely what descends from a paternal grandfather; for partition is also suggested in that case" (CCCLXVIII). We hold, that, as "distribution of the paternal estate instituted by sons" (I) is merely illustrative of any relation, so are the terms of the present text (IV), "After the death of the father and the mother," and, "the paternal estate;" consequently, it is only after the death of him, whose estate may be divided as heritage, that partition is made. Such is the meaning of the text! But JIMUTAVAHANA, RAJUHĀNDANA and others argue from the expression "after the death of the mother," that 'partition among sons, while their mother lives, is immoral; as is intimated by the text of SĀNC'HĀ and LICH'ITĀ (XVII).' They consider the text of SĀNC'HĀ as signifying, that, since sons are not their own masters while their mother lives, a partition ought not to be made without her consent, for she is most venerable; and the text of MENU must be also adduced for the same purpose. Here some lawyers infer from the phrase, "they have no power over it, while their parents live," that they have a title in the estate, while the father lives, but cannot appropriate it at pleasure without his command. But JIMUTAVAHANA has said, 'there is no proof of property then vested in sons.' DE'VALA expressly declares it.

his estate; but they have not ownership or full dominion while a faultless father lives.

By the mention of faults, it is intimated, that should a blamable father be living, sons have ownership of his estate. It follows, that property is divested through faults. The very same exposition is delivered by RAGHUNANDANA and others. NA'REDA may be quoted in answer to the question, what defect?

## VI.

NA'REDA:—THE father being degraded, or become an anchoret, or having resigned, or deceasing naturally, his sons may divide this estate.

" DEGRADED," fallen from his class.

RAGHUNANDANA.

CONSEQUENTLY even degradation is suggested by the word defect.

" BECOME an anchoret," quitting the order of a housekeeper. " Having resigned," though his title subsist, having no wish to retain the property vested in him.

RAGHUNANDANA.

For this shews, that sons have property in their father's estate, through his resignation or the like.

JIMUTAVAHANA.

BUT CHANDESWARA explains the term, " void of desire for worldly concerns." He reads the text *nruritte vāpi ramata-pitary-uparata-sprībē\**, instead of *vinaśite vāpy-aśarané pitary-uparata-sprībē*; and expounds that reading, " capable of connubial intercourse, but refraining from it." MISRA delivers a similar exposition. HELAYUDHA reads *nruritte vāpi marandē*: that has been expounded by JIMUTAVAHANA as an epithet of the

\* With this reading, it forms the last hemistich of the text subsequently cited (LV).

subsequent term; 'exempt from decease (that is, alive) *but resigning*.' Another reading is approved by the author of the *Pracðsa*, but is not noticed by JI'MU'TAVA'HANA. In his opinion the divesture of the father's property, in the case of resignation, is expressly declared. According to CHANDE'SWARA and others, the same must be deduced *from the premises*. But according to RAGHUNANDANA, the right subsists even in the case of one, who ceases to desire property.

THERE is a cessation or failure (*uparama*) of affection (*sprika*) or desire for worldly concerns. Now that occurs continually, for the duration of wish or desire is limited to two moments: it must therefore be affirmed to be the cessation of final desire. Such being the case, a father has at first withdrawn from *temporal* concerns; and having thus resigned *worldly* affairs, he afterwards again desires *temporal* concerns: in such a case, is the father's resignation *irrevocable*? In answer to this question, the same author observes, that property, being devested through abdication, cannot be revived by subsequent desire. He thus defines a resignation adapted to this purpose; 'annihilation of desire, not contemporary with antecedent privation of *any* desire contemporaneous with property, is resignation.' Consequently so many wishes, as passed previous to abdication, as well as antecedent privation of future wishes, were contemporaneous with property; for the right was not devested, since it had not been then abdicated: the wish, which is not contemporaneous with such antecedent privation, is the last of wishes anterior to abdication; the cessation of that is resignation: and in like manner, no wish is again formed in the interval which follows such final wish for worldly concerns; abdication takes place thereafter: whether desire will or will not be subsequently revived, partition may be made by sons, when such desire has *once* ceased. Thus some explain RAGHUNANDANA's meaning.

THAT is not tenable; for sons cannot make a partition of their own accord, while the father's right of property subsists; having resigned and withdrawn from worldly concerns, he forms no wish of partition; the distribution cannot be that, which is made by the father; and, without abdication, it cannot be proved, that the last wish for worldly concerns has been formed. In fact, it is impossible to part with property; and it is ultimately the same with abdication;

for the cessation of wish for worldly concerns, accompanied by a declaration in this form, "henceforward I will not act in *worldly* affairs," annuls the right of property; afterwards, when four years have elapsed, if he again desire worldly concerns, still property is not revived. Again; since there is antecedent privation of that wish, which will be formed after the lapse of four years, the epithet, "contemporary with property," has been subjoined to deduce resignation from the cessation of desire contemporary with that declaration. Again; since the failure of property takes place at a moment subsequent to the cessation of desire contemporary with that declaration, it is said, "even though the property subsist," to authorize partition at the moment when desire ceases. This some allege. But it is unsatisfactory; for it is liable to the same objection. Hence the opinion of JI'MU-TAVA'HANA and the rest seems accurate. "Having resigned," explained as signifying void of wish for the use of women, corresponds with the text, "when their mother is too aged to bear more sons" (XX), even though the present text be not read *nrvitte vāpi ramane*, or refraining from amorous delights.

HOWEVER, some lawyers think partition among sons authorized by law, even though the father's title subsist, when it is any how known, that the wish for worldly concerns has utterly ceased. But the father's property does then subsist, since he has not abdicated by a declaration in this form, "it shall no longer be mine," nor has deceased or otherwise vacated his estate. Let it not be objected, that no partition could be made, while the father's property subsisted. The law has authorized partition even in the case of one, who ceases to desire property; and by that term is signified the utter failure of such wish. But if the owner, having entertained no wish during a certain space of time, afterwards desires worldly concerns, there was no resignation. After withdrawing his affection from things of this world, if he abdicate his estate in this form, "let this be no longer mine;" then indeed property is devested by abdication: and afterwards, even though temporal inclinations revive, property is not renewed. With this view it is said, "contemporary with property." The resignation can only be known from the declaration of the party. Thus the opinion of RAGHUNANDANA is justified. Abdication is comprehended in the text, by considering the terms

as illustrative of a general sense; or included under the term "anchoret," explained in the same manner in which the text of HA'RITA (XXIII) is expounded by the author of the *Pracâsa*; living on the wealth, and under the rule, of his sons, without becoming a recluse according to the *Veda*.

IN the case of degradation, forfeiture of property must be understood, when the offender is averse from expiation; for the gift of their whole estate is recorded as an expiation for degraded persons.

RAGHUNANDANA, SRI CRISHNA TERCALANCARA and others.

BUT VACHESPATI BHATTACHARYA holds, that a degraded man, and an anchoret, only forfeit property previously vested in them; else the laws, which forbid the receipt of presents from a degraded man, and which show the succession of heirs to the estate of a (*sannyâsi*) or devotee in the fourth order, would have no authority. Again; the right to former wealth being forfeited even though he be not averse from expiation, that expiation may be, nevertheless, accomplished with money subsequently begged from sons or others; and it cannot therefore be said, that the expiation can no otherwise be accomplished.

HERE it should be noticed, that, if the property of a degraded man be divested, even though he be desirous of expiation, he does not, after performing penance, become owner of wealth, his right to which was forfeited at the moment of degradation: for there is no argument to prove ownership then *recovered*; and to hold it admissible, would contradict approved usage. Consequently, even in the case of aversion from penance, degradation is the sole cause of forfeiting property which was vested before the loss of rank; and this is founded on the inconsistency with approved usage, which is objected to the contrary inference. In the case of a recluse likewise, abdication solely annuls property: retirement cannot be established as an independent cause of annulling it. "Or the, father deceasing naturally, his sons may divide his estate" (VI); by mentioning partition among sons after the natural decease of the father, it is cursorily intimated by NARENDRA, that property is immediately vested in them.

## VII.

SANC'HA and LIC'HITA :—SINCE partition of the estate takes place after his decease, sons cannot divide it while the father lives, even though it were acquired by them independent of him; they have no power *to make such a partition*, since they are not their own masters in respect of wealth or religious duties.

" AFTER his decease ;" after the death of the father. " Partition ;" division of heritage. The word " only" cannot be here supplied; *since partition is seen in practice*, even while the father is living, by his choice : may sons therefore divide the estate while the father lives ? The sage replies, " sons cannot divide the estate while the father lives :" they cannot then divide it without his consent. But some expound the text, *by completing the cause assigned*; ' since sons are only entitled to the heritage when their father is deceased, therefore they shall not divide the estate while he lives.' " Acquired independently of him ;" this is explained in the *Retnácarā*, " acquired by united efforts in science or the like, independently of the father." The meaning is, that the term suggests this sense, ' acquired by them independent of their father.' To satisfy the question, how can any thing be acquired independently of him, the commentator adds, by united efforts in science or the like. Yet the same must also be admitted without united efforts : we cannot determine what is the use of this insertion.

## VIII.

HA'RITA :—WHILE the father lives, sons are not independent in respect of the receipt, alienation and recovery of wealth; but if he be prodigal, absent in a remote country, or afflicted with disease, let the eldest son manage the affairs.

" RECEIPT of wealth ;" taking common property without reference to the father. The *Párijáta* expounds it acquisition. Consequently, without the assent of his father, a son should not do any act for the acquisition of wealth. He is therefore not independent in respect of property then acquired. That is, the present text has the same import with the text above cited.

cited. "Alienation;" gift. "Recovery;" obtaining money from the hands of a debtor. In respect of these things, sons are not independent; they are not capable of acting without their father's assent. "Prodigal;" giving *money* away for his own pleasure only; disposed to make gifts on the sole suggestion of his own will, without attending to the gain or loss of merit and riches. 'If the father be such' must be supplied in the text. Such is the exposition approved by CHANDE'SWARA. The mention of management intrusted to the eldest son, when the father is prodigal, shows his superior authority above the rest, in respect of their affairs: no other can oppose the owner of wealth, who gives it away at his own pleasure. Yet it must not be supposed, that the eldest son's management only is ordained, not opposition to prodigal waste. Since management intrusted to the eldest son, being mentioned, shows that the father is deprived of the management, it follows, that the father has not the effects in his power. The author of the *Pracáśa* reads *cáman diné* instead of *cámadáné*; and explains it, 'solely by the choice of the father, if he be despondent.' This reading is noticed by JÍMU-TAVAHANA.

It appears from the text of HÁRÍTA, that if the father be living, but any how disqualifed for business, the eldest son has a right to manage the affairs. MĀSU also declares, that the eldest son alone shall conduct the affairs like a father, although the title of all the brethren to that estate be equal.

## IX.

MENU:—THE eldest brother may take entire possession of the patrimony; and the others may live under him, as they lived under their father, unless they choose to be separated.

HAVING premised, that "brethren may divide the paternal estate after the death of the father and the mother," he proceeds to declare, that "the eldest brother may take entire possession of the patrimony;" that is, the eldest, endued with all the most eminent virtues, shall have power, like a father, over the inheritable patrimony.

CONSEQUENTLY the title of the eldest son alone, to possess the whole estate after the father's decease, is propounded. Since the preceding text (IV) had shown the succession of several sons, the others must live under him, receiving food and yesture. This must be supplied in the text. Hence his younger brothers should incur no expense whatsoever without his consent.

"THE others may live under him;" that is, they should so behave, as they are guided by his conduct.

The *Retnácarā*.

THIS is a rule for partners living together. If all the sons have an equal title to the patrimony, why should the eldest son alone exercise authority over it? To this question the same legislator replies.

## X.

**MENU:**—By the eldest, at the moment of his birth, the father, having begotten a son, discharges his debt to his own progenitors; the eldest son, therefore, ought *before partition* to manage the whole patrimony :

2. That son alone, by whose birth he discharges his debt, and through whom he obtains immortality, was begotten from a sense of duty: all the rest are considered by the wise as begotten from love of pleasure.

"HAVING begotten a son;" being relieved from the evil attendant on the want of male issue. And that evil is suggested by the scripture, which declares, that a blissful region is not attained, if male issue be wanting: that is, a place of purity is missed.

CULLO'CABHATTĀ:

ACCORDINGLY it is mentioned in the *Mahábhárata* towards the end of the first book, that the ingress of the sage MANDAPĀ'LA into a region of purity was prevented by the want of male issue: for the same poem shows, that the debt to his progenitors, undischarged, is the ground, on

man is excluded from the blissful region, even though his conduct have been virtuous. In this case it therefore appears, that the debt to progenitors is discharged when a son is begotten. The sage expressly declares it; "by the eldest, at the moment of his birth, the father discharges his debt to his own progenitors." By these terms, "at the moment of his birth," it is intimated, that the son's performance of rites ordained by the *Veda*, and his sacraments and the like, are not requisite *to this effect*. Accordingly, should the son die immediately after birth, still his father is exonerated from debt *to his progenitors*. The scripture shows, that the debt continues while no son is born, and is discharged by the birth of a son. For this reason he ought to take entire possession of the patrimony. But this is mere commendation of the eldest son, not in effect declaring his property in the whole estate; for a former text propounds the equal title of all sons. Since the authority of one son over all *the rest* must be established, that commendation is a ground of selection, and an argument, whereby the authority of the eldest son alone is established. "The eldest son was begotten from a sense of duty;" he produces merit, whereby bliss in a region of felicity is attained: by this phrase, the sage again celebrates an eldest son, by whose birth the father discharges his debt, or on whom he devolves the load of debt, and through whom he obtains immortality, or perpetual delight, because he is relieved from debt. But some remark, that immortality is obtained through a grandson, as declared in the following text, which is thus expounded by CULLUCABHATTA; "by a son, a man conquers all worlds, the celestial abode and the rest; through a son's son he remains there long;" consequently this sense is suggested, "through the eldest son of his eldest son he obtains an endless abode."

## XI.

MENU:—By a son, a man obtains victory over all people; by a son's son, he enjoys immortality; and, afterwards, by the son of that grandson, he reaches the solar abode.

CULLUCABHATTA has expounded "obtain immortality," become exempt from death, and has quoted the authority of the *Veda*. In this text (X 2) the devolving of the debt on the eldest son is mentioned as a cause,

which produces merit, whereby the gates of a blissful region are opened to the father. Hence there is no vain repetition. "The rest are considered by sages as begotten from love of pleasure;" as procreated by one, who embraces a woman, *solely* for the enjoyment of pleasure. This is merely figurative; for a text expresses, "many sons are to be desired, that some one of them may go to Gayā."

THAT being the case, should the eldest son, by force or artifice, take the whole estate, would there be no offence? Not so; for the same sage thus proceeds;

### XII.

MENU:—As a father should support his sons, so let the first born *support* his younger brothers;\* and let them behave to the eldest, according to law, as children *should behave* to their father.

LET the first born support his younger brothers, in like manner as a father should support his sons; let him not defraud them: and let them behave to him as sons; and not bear him malice.

### XIII.

MENU:—THE first born, *if virtuous*, exalts the family, or, *if vicious*, destroys it: the first born is in this world the most respectable; and the good never treat him with disdain.

HE exalts the family by proper acts; if the younger brothers be supported, the family is exalted. Or he destroys it by *mischand*; this is merely a *supposed* possibility.

The Rennacara.

IT is merely a supposed possibility; for, though unsupported *by him*, if they are by any *other* means maintained, the family cannot be destroyed.

\* Ch. 9, v. 108. The difference in translation is slight. Sir W. J. must have read *pūrvā*, instead of *pūtā*.

But CULLU'CARNATT A thus comments on the text ; ‘ in whatever path of vice or virtue the eldest brother walks, that same path do his younger brothers follow ; by virtuous proceeding the family is exalted, by vicious proceeding it is destroyed : and the virtuous first born is most respectable in this world, and never slighted by the wife.’

## XIV.

MENU :— IF an elder brother act, as an elder brother ought, he is *to be revered* as a mother, as a father; and, even if he have not the behaviour of a good elder brother, he should be respected as a *maternal uncle or other kinsman*.

“ As a mother ;” by thus mentioning his parity with a mother, it is intimated, that the first born may take possession of the maternal estate. In like manner, even in other cases of estates left by relatives, *the eldest brother may take entire possession*. This observation of some lawyers is questionable. “ The behaviour of a good elder brother” consists in the support of his brethren and the rest. Even though he neglect that, he should be revered, but *only* as a kinsman, such as a maternal uncle and the rest: obedience to his commands is not required.

## XV.

LET not an elder brother present ornaments to his wife, without giving *due maintenance* to his younger brothers.

LITERALLY a nuptial present; expounded by HELA'YUDHA, ornaments of a wife and the like.

## XVI.

NA'REDA :—LET the eldest brother support, like a father, all the others, who are willing *to live together without a partition*; or even the youngest brother, *if all assent, and if he be capable of business*: capacity for business is the best rule in a family.

BUT, if the eldest son be incapable, and the middlemost, or another, be capable of business, he alone has authority over the whole patrimony; for he is able to support the rest. Thus the sage adds, "capacity for business is the best rule in a family;" *the best rule* regards capacity for business or ability to support *the family*. Consequently seniority by age is not an indispensable requisite. If the management of the whole patrimony go with capacity alone, is not the commendation of the first born, as delivered by MENU, improper in this place? *This may be answered by asking,* is the management of the whole patrimony conferred by such commendation alone? for support is also ordained (XII). Consequently, if two sons, or all the sons, be capable of business, to show that in that case the first born alone shall have the management of the whole estate, although another son be also capable of supporting *the parceners*, the commendation of the first born has been pronounced.

## XVII.

SANC'HA and LIC'HITA:—SHOULD the father be incapable, let the first born manage the affairs; or the next son experienced in business, if the father assent. Not without the father's consent, can a partition of the property be made. If he be old, if his faculties be impaired, or if he be afflicted with a chronick disorder, let the eldest son, like a father, protect the property of the rest; truly the support of the family depends on the patrimony: sons, who have parents living, are not independent, nor even, *after the death of their father*, while their mother lives.

"THE next;" the middlemost; or, should he also be incapable of business, the son born after him: such is the order. "If he assent to it," is expounded in the *Retnácará*, with the approbation of the eldest son: we explain it, with the consent of the father. Thus the trust of supporting the family is mentioned as devolving on the first born and the rest successively; the care of the property, when the father becomes old or the like, is subsequently mentioned: there is, consequently, no vain repetition. Here also seniority is not invariably required; but he alone, who is experienced in affairs, should

take care of the property. In naming the eldest, it is supposed, that every brother, or the eldest at least, is experienced in business. Consequently, as the eldest, the next born, or the youngest, should support the family and protect the property, while the father is living *but disqualifed*; so should the same be also affirmed after his decease. The first born is here supposed to be living, for the text mentions "the next son;" by this term (*anantara*) is signified one born immediately after him; else it would have been said, another brother. The commendation of the first born, as delivered by MENU, supposes him to be living.

" If his faculties be impaired" (XVII); if his intellect be disturbed by *vitiated* air or the like.

The *Retnácarā*.

THE sage mentions a reason for the indispensable necessity of protecting the property through the eldest or other son, when *the father* himself is incapable; " the support of the family depends on the patrimony."

" Sons are not independent;" they have no power to alienate *property* by gift or the like. They are also not independent while their mother lives and is virtuous.

The *Retnácarā*.

WITHOUT her consent, they have no power to alienate *property* by gift or the like. Since the mother has no property in the estate after the father's decease, sons alone could have aliened it by gift or the like. This text is delivered as an argument, by way of example. Consequently such is the mode, in which sons should live together after their father's decease: and that is only enjoined, if all consent; else a partition must be made.

### XVIII.

MENU:—EITHER let them thus live together, or, if they desire *separately to perform* religious rites, let them live apart; since religious duties are multiplied in separate houses, their separation is, therefore, legal and even laudable.

" Thus

" *Thus live together;*" although their title to the patrimony be equal, the rest should appoint any one brother, the first born or another, to govern the whole; they should conduct themselves with proper behaviour, according to his directions. Let them thus live together. Or, if they desire to multiply religious duties, let them live apart. We shall comment on this text in the chapter on partition made by sons.

## XIX.

SĀNC'HĀ and LīC'HITA :—WILLINGLY let them live together;  
by union they exhibit thrift.

By their union, that is, by their mutual assistance, they exhibit or display thrift; that is, they thrive.

The *Retnācara.*

## SECTION II.

## ON THE PORTION OF AN ELDER SON IN A PARTITION MADE BY A FATHER.

SINCE the text of SAN'CHA and LIC'HITA (XVII) shows, that partition may not be made without the father's consent, it appears, that partition should be made, if the father choose to divide the estate. Hence partition among sons, even though their father be living, does take place, but founded solely on the father's choice.

## XX.

GO'TAMA:—AFTER the death of the father, the sons may divide his estate; or while the father lives, if he choose to divide it, and if their mother or *any other wife* be too aged to bear more sons.

"AFTER the death of the father, the sons may divide his estate," this intends partition made by sons. That title will be discussed.\* "If their mother be too aged to bear more sons;" this supposes an estate inherited from the paternal grandfather.

JIMU'TAVA'HANA, RAGHUNANDANA and others.

THAT shall also be hereafter explained. The text must be supplied; "while the father lives," and, "if he choose to divide it."

## XXI.

SANC'HA and LIC'HITA:—WHILE the father lives, the estate may be divided, with his consent, openly *in the presence of*

*arbitrators, or privately by a mutual adjustment, according to law.*

" WITH his consent ;" with the consent of the father.

CHANDE'SWARA and others.

CONSEQUENTLY the two legislators expressly declare, that, while the father lives, the estate can only be divided with his consent. " Openly ;" that is, in the presence of arbitrators. " Privately ;" without the intervention of arbitrators, by a mutual adjustment only, but according to law.

### XXII.

BAUDHA'YANA :—WITH the father's assent, a partition of heritage may be made.

WHEREFORE should a father, who lives happily with sons and the rest, desire partition ? To this HĀ'RĪ'TA replies.

### XXIII.

HĀ'RĪ'TA :—A FATHER, making a complete partition even during his life, may either go to the forest as a hermit, or enter at once into the fourth order, or that of an anchorite ; or he may divide a small part of his fortune among his sons, and remain in his house, keeping the greater part of it, but without concealing any portion of his wealth : should he lose, by some calamity, what he reserved, he may take back from them, for his maintenance, what he gave ; but he must give a portion to sons reduced to indigence.

" MAY go to the forest ;" may enter into another order. The author of the *Pracāśa* explains the subsequent term (*literally* " the order suitable to an aged man ") " living on the wealth, and under the rule, of his sons, without becoming a recluse according to the *Vēda*." \* HELA'YUDHA and the Pārijāta expound the term as signifying the fourth order: in their opinion the preceding

\* See Mxv, Chap. 7, v. 86 and 94.

term, " go to the forest," is restricted to the hermit or *third order*. But in fact, as is observed in the *Retnácarā*, the disjunctive particle being indeterminate, other legal forms of *retirement*, besides the seclusion of a hermit, or of an aged man *abiding in the house of his son*, do also occur. Hence a father may also retire to the bank of the Ganges or other holy place, subsisting on alms or the like. Intending to enter into another order, a father reflects, " when I am no longer present, my sons, contending for wealth, will be ruined by mutual injuries; I must therefore divide the estate amongst them." This and other occasions may be understood. But when a father, wearied by the mutual contests of his sons in regard to the fruition of the estate, divides the estate among them and resides at home, determining, " I will live apart, reserving a sufficient portion for myself;" then the legislator says, " he may divide a small part of his fortune." Consequently he may divide an inconsiderable part among his sons; and they may gain other property and support themselves: but the father being old, and of course unable to labour, may reserve a considerable sum sufficient for his own support and for religious purposes, and may *thus* reside at home. However, he must practise no fraud. But if, in consequence of any accident, his wants cannot be supplied out of the property reserved, however considerable it might have been, then the lawgiver declares, " should he lose what he reserved, he may take back from them, namely from his sons, what he gave." The reason is, that no duty is more strictly incumbent on sons and the rest, than veneration of parents: and, if the purpose cannot be fulfilled even with the whole of the wealth acquired and distributed by the father, they must even give wealth acquired by themselves. " But he must portion sons reduced to indigence:" if any of his sons be incapable of maintaining themselves, he must support them out of his own property, *which be reserved.*

## XXIV.

**NA'REDA:**—OR even the father, being advanced in years, may himself divide the estate among his sons, giving to the first-born the best portion, or in any mode, which he shall choose.

THE particle "or" denotes an alternative; either the father or the sons

may divide the estate. Consequently the sense is, when the father has reached old age, his sons may make the partition with his consent. Or this other case may be the partition, which is made after the death of a father. " Being advanced in years;" at any period in the second or third stages of life, and so forth: \* such is the sense. Accordingly GO'TAMA ordains a *second* partition when a son is born after partition has been made. " The best portion;" a greater portion; the deduction of a twentieth part ordained by MENU, or other suitable portion. The same should be also understood in respect of the middlemost and the rest. This concerns eldest sons and the rest endued with virtuous qualities. The very same exposition is delivered by RAGHUNANDANA and others. CHANDESWARA explains "best" most excellent, greatest. The form of a deduction equal to the twentieth part of the estate will be explained. " Or in any mode, which he shall choose;" he may reserve any part he chooses, or give more to any one of his sons, and less to another.

## XXV.

VISHNU:—If a father make a partition between himself and his sons, he may give or reserve, at his pleasure, any part of his own acquired wealth; but over *landed* property left by a paternal grandfather, the father and the sons have equal dominion.

THIS concerns wealth acquired by the father without using the patrimony which had descended from his own father.

CHANDESWARA.

WHAT has been acquired without adventuring the patrimony, a father has power to distribute in equal or unequal shares.

MISRA.

AND that is reasonable; for what is gained on the adventure of property left by his father, being considered as an acquisition of his father, by means of that property *adventured*, is deemed a part of his patrimony. But

\* Infancy is the first stage; the clost of life is the fourth. T.

it may be objected, that, if a man recover by his own labour the property of his grandfather, which had been seized by a stranger, it is treated as property acquired by himself, yet wealth gained by his own skill and labour, with the use of an inconsiderable portion of the wealth left by the grandfather, is considered as a part of the patrimony descending from the grandfather this appears unequal

## XXVI

YΛJNYAWALCYA.—If the father make a partition among his sons, he may give, at his pleasure, *more to some and less to others*, or give the first born the portion of an eldest son, or divide the estate among all of them in equal shares.

THIS text declares three cases 1st at his pleasure, he may give more to some and less to others, 2dly. he may give the first born the portion of an eldest son, 3dly he may give equal shares to all his sons Unequal distribution is not prohibited in the case of partition made by the father, as it is in that of partition made by sons, to declare this and other points, another text will be delivered There is consequently no vain repetition. Some remark, that partition cannot be made at the option of sons, since they have no property in the estate while the father lives Hence, as is observed in the *Dipacalpa*, the term "at his pleasure" denotes, that the distribution should be made at the pleasure of the father, not of the sons The same legislator propounds unequal distribution in another text (XXXIII) hence both opinions may be received under the ambiguous sense of the phrase, since others get propounded both rules In none of the three cases is the distribution made at the pleasure of sons; and the reason of that is their want of ownership This, however, concerns wealth acquired by the father himself; for a different rule will be propounded (XLII) in respect of property descending from the grandfather Such is the opinion intimated in the *Purusha*.

*ALTHOUGH* if there be power to give, at his pleasure, more to some and less to others, when he distributes wealth acquired by himself, still an unequal distribution will be made through partiality, resentment or the like.

## XXVII.

**CATYAYANA:** — IF a father, during his life, divide the property, he shall not prefer one of his sons, nor exclude one of them from a share, without a sufficient cause.

“ WITHOUT a sufficient cause,” such as duty and piety, a large family to maintain, or inability *to earn his livelihood* and the like (as explained on the concurrent opinions of JIMUTAVAHANA and the rest), he shall not prefer one son, or distinguish him by assigning to him a larger portion; nor shall he exclude one of his sons from a share, or disinherit him, without a sufficient legal cause of exclusion, such as degradation and the like, or spontaneous relinquishment of his share. In like manner he should not give to the eldest a deduction equal to a twentieth part of the estate or the like, without a sufficient cause, namely the virtues required. Consequently, if there be a sufficient cause, he may give a greater portion to one of his sons, a deduction of a twentieth part and so forth to the first born and the rest, and no share to an eunuch, an outcast, or the like. But if he do give a greater portion to one son, through partiality, because he was born of a favourite wife, and give less or none to another son through resentment, or give the portion of an eldest son to his first born though destitute of virtue, that distribution is invalid.

## XXVIII.

**NA'REDA:** — A FATHER has no power, if his intellect be disturbed by sickness, or his mind agitated by wrath, or his affection partially set on the son of a favourite wife, to make a partition different from the law of inheritance.

A FATHER, acting in a mode not conformable with law, through delusion arising from acute disease, in which air or other constitutional element is depraved, or through delusion arising from wrath, or through the influence of excessive partiality on his mind, from love or the like, has no power to make an irregular partition. His want of power consists in this; whatever distribution is thus made by him, is void, because it is made by one, who is disqualified; as the ceremonies ordained to be performed at twilight are fruitless, when per-

formed by a man of the servile class, because he is disqualified. Accordingly, VA'CHESPATI BHATTĀCHA'RĀ observes on the text of NA'REDA, that the phrase "a father has no power" shows, that, if sickness or the like be the cause, unequal partition, even though made by the father or other owner, and even though the wealth were acquired by himself, is invalid like an act done without ownership. "*A partition different from the law*" here signifies a partition, in which more is given to one, and less to another, deviating from the law, which propounds the portion of an eldest son and the rest. The particle connects the act with the several circumstances enumerated in the first hemistich, "if his intellect be disturbed by sickness," &c. However, since CA'TYĀYANA declares a reserve, "without a sufficient cause" (XXVII), unequal partition made by the father, and refusal of partition, in respect of property acquired by himself, which are declared by VISHNU and many other sages to depend on his pleasure, are legal, according as there is, or is not, a sufficient justifiable cause of partiality in the mind of one, whose intellect is undisturbed, as regularly happens among good men; (such are duty and piety, a large family to maintain, inability to earn a livelihood and so forth;) or a sufficient cause for excluding one son from a share, such as degradation and the like: the partition is valid, because there is no impediment, such as sickness and the rest mentioned by NA'REDA.

SINCE it is declared, that the ruler of the family has no power to make such a partition, the object of that proposition is, to show the subject of the epithets or accidents, "making a partition different from the law," "if his mind be disturbed by sickness," &c. Here the deviation from the law is the cause, which invalidates the partition. The accident or epithet, "whose intellect is disturbed by sickness," as well as the rest, is both characteristick and causal. If he act contrary to the law through partiality, he is deprived of power: this is characteristick. Why should he act contrary to law? Because his intellect is disturbed by sickness: this consequently is a causal description. "Deviating from the law, which propounds the portion of an eldest son:" therefore an allotment of a greater portion, arising from the deviation of a twentieth part or the like, does not constitute a partition different from the law of inheritance.

\* See the definition of illegal partition in the preceding paragraph.

THE text of YĀJNYAWALCYA (Book II, Ch. IV, v. LVIII) is explicit. Since the eighteen titles of administrative law are comprehended under the term "contract" (*vyavahāra*), partition of heritage by a person so circumstanced is also null; for MENU likewise applies the same term to inheritance, "these eighteen titles of law are settled as the ground work of all judicial procedure (*vyavahāra*) in this world" (Book II, Ch. I, v. II). In this place also, the term (*vyavahāra*) signifies title of jurisprudence, or *act cognizable in courts of justice*.

"INTOXICATED;"\* *inebriated with wine or the like.* "Infane;" through the depravation of constitutional elements, as air or the like. "Grievously disordered;" afflicted with severe illness. "Disabled;" disqualified, being addicted to gaming or the like. "Infant;" under the age of sixteen years. "Agitated by fear;" impelled by dread of punishment and the like. "Without authority;" unauthorized by the owner. Gratuitous gifts and the like made by these are invalid. In six cases mentioned from inebriation to fear, the reason of *invalidating the contract* is the perturbation of mind. But, as RAGHUNANDANA observes, a man wholly dependent, a slave, a son and the rest are comprehended under the term "and the like:" and that observation is just.

VĀCHESPATI BHATTĀCHĀRYA.

HERE the expression "gaming or the like" comprehends lust and other passions; for the word, which occurs in the text, (*vyasana*) is explained, 'danger or calamity, degradation, and vice proceeding from lust or wrath.' Consequently the sense is this; as the worship of deities, performed during impurity, is productive of no merit, so does the volition of one insane, wrathful, or the like, who intends to make a gift, produce no divesture of former property: for, as a pure *worshipper* is alone qualified for one act; so is a wrathless man or the like for the other. Consequently, since the distribution made by him is null, partition must be made afresh. However, should he not give a deduction of a twentieth part and so forth to a virtuous eldest son and the

\* That a reference may be unnecessary, I subjoin the text. A contract made by a person intoxicated, or insane, or grievously disordered, or disabled, by an infant, or by a man agitated by fear or the like, or in the name of another by a person without authority, is utterly null. Book II, Ch. IV, v. LVIII.

test, the partition is not therefore invalid; for the allotment of a twentieth part and the like is founded *only* on piety and other merits, and equal partition is also propounded by the law: and if he do allot a suitable portion including a deduction of a twentieth part and so forth, to his eldest son and the rest, the partition is not different from the law of inheritance; for the law assents to a deduction of a twentieth part and the like. This brief statement may suffice. The disabilities, which are comprehended under "degradation &c," will be explained in the chapter on exclusion from inheritance.

## XXIX.

**MENU:**—If, among undivided brethren *living* with their father, there be a common exertion for common gain, the father shall never make an unequal division among them, *when they divide their families.*

If sons unanimously demand partition, the father shall not make an unequal partition on account of *filial* piety or the like: but he may give a deduction of a twentieth part and so forth to his eldest son and the rest; for that is not considered as a share.

JIMUTAVAHANA.

RAGHUNANDANA and others concur in that exposition. But CULLUCA BHATTA thus expounds the text; 'at the time of acquisition, if there be a common exertion with the father for common gain, an unequal division shall not be made.' CHANDESWARA has a similar gloss; and the *Vivāda Chintāmeni*, in effect, concurs in this exposition: for it is there said, 'this concerns property acquired by brothers contributing equal labour to the acquisition; there is consequently no discrepancy.' In effect the gloss intends property acquired by the equal exertion of brothers in common with their father. Should it be acquired independently of the father, it will be mentioned, that the sons alone have power over it, since they are principals in the acquisition.

Two objections have been noticed by SRI CRISHNA TERCALANCARA, author of a commentary on the work of JIMUTAVAHANA: 'since reason sufficiently,

• sufficiently shows, that unequal partition ought not to be made, the text is  
 • 'superfluous:' and again; 'since MENU declares, "if a deduction be thus  
 • made, let equal shares of the residue be ascertained and received," the por-  
 • tion deducted being first set apart out of the undivided estate, it falls not  
 • 'within partition, *but precedes it.*' On this point it is said, if a joint acqui-  
 • sition be made by brethren, an unequal partition should not be allowed: this,  
 • it must be affirmed, is admitted by TERCA'LANCA'RA; for he says 'reason  
 • sufficiently shows &c.' But, if all the brethren unanimously demand parti-  
 • tion, shall, or shall not, unequal partition be made? This is the question  
 • between CULLU'CABHATTA and JI'MU'TAVA'HANA and the rest. The  
 • text relating to what reason sufficiently shows, another revealed law must be  
 • established as the foundation of *the proceeding*, in the case of partition una-  
 • nimously demanded. Such is the objection according to JI'MU'TAVA'HANA  
 • and others. As the text is expounded by thee as repeating what reason  
 • sufficiently shows, so may it not be also expounded by me as relating to what  
 • reason does sufficiently show: for a son, unable to earn a livelihood, demands a  
 • partition undue in respect of himself, and injurious to his father; hence,  
 • since he commits an offence, a greater portion shall not be given to him? No;  
 • for the word "with" would be unmeaning; and it is proper to af-  
 • firm, that, if an exertion be made both by a son unable to earn a livelihood and  
 • by the rest, an unequal division shall not be made. It has been said, 'since  
 • reason sufficiently shows &c.' now what proof is there, that a father m a  
 • not give the portion of an eldest son, out of what he may acquire with the co-  
 • operation of his children, or a greater share on account of inability to earn a  
 • livelihood, for no other text declares it, nor does the reason of the law show it? But if it be affirmed, that this is propounded with a view to the case of sons  
 • who have been unaided by their father, still there is no question; for sons  
 • alone have the ownership in the case of an acquisition made independently  
 • of the father. The law, therefore, obviates the supposition, that, the fa-  
 • ther having full power over property acquired by the joint and equal exer-  
 • tion of sons, his distribution of less to one and more to another, through his  
 • own stubborn will, is not inconsistent with common sense. Let it not be  
 • objected, that to seek another revealed law, as foundation for *the proceeding*  
 • in *the other case*, is equally elaborate. That it would be elaborate, when  
 • this is unavoidable, is no legitimate objection: and thou wouldest find it

made, if he do not choose it. Of what use then is this text? If the father, nevertheless, do give such greater share, the other sons may oppose it; for it is declared by the law, that unequal partition shall not be granted, when the brethren themselves make the exertion; a text, propounded for this purpose, is pertinent and not superfluous: if this be alleged, the answer is, it is inconsistent with common sense, that the law should attend to the claims of men guilty of equal offences.

A MAN has five sons; one dutiful, one unable to earn his livelihood, another burdened with a large family to be maintained, a fourth otherwise circumstanced. These four, but not the fifth, demand a partition. In this case unequal distribution on account of piety, duty, or the like, may be made; for there is no common exertion of all the brethren. If many, not all, be the determinate sense of the plural term, can there be no unequal division in the case of two sons, should they both demand partition, for, on this supposition, there is no common exertion of many, that is, of three or more? If the sense of the inflection be indeterminate, then, even in the case of five sons, any one contumacious son, demanding partition, might prevent the allotment of a greater share to the dutiful son, which is inconsistent with common sense.

SUCH is the opinion of ancient authors. But JIMUTAVAHANA and the rest assert in as many words, that, if the sons unite in demanding partition, a greater portion cannot be given to one on account of piety and the like, but the portions of the eldest son and the rest may be allotted to them, provided they be virtuous. On this question the intelligent must decide. This brief statement may suffice.

### XXXI.

**VRISHPATI:**—SONS, to whom equal, less, or greater shares have been allotted by their father, should maintain such distribution; otherwise they shall be chastised.

ACCORDING to CHANDESWARA and others, this text concerns wealth acquired by the father without co-operation of the sons; and the text of

more tedious to establish a double import of this text from the ambiguity of the terms, lest disparity should thus occur; the brothers having equally contributed to the acquisition, any one of them, who has a large family to maintain, shall take a greater share; but, the brothers having made equal exertions to obtain partition, any one, who has a large family to support, shall only receive an equal share with the rest.

As for what has been said, that the deduction of a twentieth part falls not within partition, that does not appear accurate; for VRĪHASPATI (XXX) declares a distribution of shares with a deduction of a twentieth part to be one form of partition, and without it, the other form; and partition, consisting in the property being predicated of each son individually after divesting the property of all the sons collectively, and in the ascertainment of *individual* property previously unascertained, does exist in this case. On the contrary, MENU propounding equal shares after having explained the deduction of a twentieth and the like, it appears, that the term "equal partition" signifies the allotment of shares without a deduction of a twentieth part. However, it appears from the insertion of the word "never," that an unequal division, originating in filial piety or the like, should not be made. Accordingly MISRA cites this text (XXIX) after explaining the deduction of a twentieth part. Again; the word "*utt'bána*," signifying acquisition, occurs in the instance of concerns among partners (*sambhúya samutt'bána*), more literally, common exertion of partners. There is no objection to its also bearing the same sense in this instance.

### XXX.

**VRĪHASPATI:**—Two modes of partition among heirs are expressly mentioned; one, with attention to priority of birth, and the other, with equality of allotment.

As for what is said, that, when sons demand partition, an unequal division should not be made, even on account of *filial* piety or the like, because, however dutiful he may have been, the son has in this instance committed an offence; the answer is, since such an allotment depends solely on the choice of the father, it is already known, that no such allotment is made,

made, if he do not choose it. Of what use then is this text? If the father, nevertheless, do give such greater share, the other sons may oppose it; for it is declared by the law, that unequal partition shall not be granted, when the brethren themselves make the exertion; a text, propounded for this purpose, is pertinent and not superfluous: if this be alleged, the answer is, it is inconsistent with common sense, that the law should attend to the claims of men guilty of equal offences.

A MAN has five sons; one dutiful, one unable to earn his livelihood, another burdened with a large family to be maintained, a fourth otherwise circumstanced. These four, but not the fifth, demand a partition. In this case unequal distribution on account of piety, duty, or the like, may be made; for there is no common exertion of all the brethren. If many, not all, be the determinate sense of the plural term, can there be no unequal division in the case of two sons, should they both demand partition, for, on this supposition, there is no common exertion of many, that is, of three or more? If the sense of the inflection be indeterminate, then, even in the case of five sons, any one contumacious son, demanding partition, might prevent the allotment of a greater share to the dutiful son, which is inconsistent with common sense.

SUCH is the opinion of ancient authors. But JI'MU'TAVA'HANA and the rest assert in as many words, that, if the sons unite in demanding partition, a greater portion cannot be given to one on account of piety and the like, but the portions of the eldest son and the rest may be allotted to them, provided they be virtuous. On this question the intelligent must decide. This brief statement may suffice.

## XXXI.

**VR̄IHASPATI:**—SONS, to whom equal, less, or greater shares have been allotted by their father, should maintain such distribution; otherwise they shall be chastised.

ACCORDING to CHANDE'SWARA and others, this text concerns wealth acquired by the father without co-operation of the sons; and the text of

MENU (XXIX) concerns property acquired with their co-operation : there is no contradiction. According to JI'MU'TAVA'HANA and others, the text of MENU should be adduced in the case of partition demanded by the sons, and the text of VR̄IHASPATI in the case of partition made by the father of his own accord.

### XXXII.

NA'REDA :—WHETHER the father distribute equal shares to his sons, or give more wealth to some and less to others, *according to circumstances*, such shall be their shares ; for the father is lord of all.

THIS and the following text of YA'JNYAWALCYA have the same import with the text of VR̄IHASPATI.

### XXXIII.

YA'JNYAWALCYA :—THE distribution made by the father is declared binding on sons, among whom an unequal division has been made.

AGAIN, these texts imply, that, if the father give a greater portion to one son on account of his filial piety or the like, another son may not oppose that disposition. But should he give his whole fortune, or nearly the whole, to one son, through partiality, and give nothing to another, or a trifle only, through resentment, such a distribution may be resisted. The text of VR̄IHASPATI and others cannot deny the right of opposition ; for it is declared in the text above cited, that "the father has no power, *in such circumstances*, to make a partition different from the law of inheritance" (XXVIII). The acquisition of property by co-operation of father and sons shall be subsequently discussed.

A DEDUCTION of a twentieth part has been mentioned : of what nature is this deduction ?

### XXXIV.

MENU :—THE portion deducted for the eldest is a twentieth part

part of the heritage, with the best of all the chattels; for the middlemost, half of that, or a fortieth for the youngest, a quarter of it, or an eightieth.

THAT, which is deducted (*uddbriyaté*), is a deduction (*uddbára*) or portion deducted. "A twentieth part" is one part in twenty. The best of all the chattels *shall be also allotted to him*; for the particle bears the collective sense: both should be given to the eldest, and should be first set apart for him. Next, "half of that," or half of a twentieth part, that is, one part in forty, must be set apart for the middlemost; and "a quarter of it," or a quarter of a twentieth part, that is, one part in eighty, for the youngest. Dividing the residue into equal shares, as directed by MENU (XXXIX 1), let one share, together with the twentieth part *already deducted*, be given to the eldest; another, with the fortieth part, to the middlemost; another again, with the eightieth part, to the youngest.

THIS is the first of two modes of partition mentioned by VRÍHASPATI (XXX). The fortieth parts should be computed on the whole estate, not on the residue after deducting a twentieth part; for that is expressly declared by the term "half of that." The same *should be also affirmed* in respect of an eightieth part. Consequently, where three sons inherit, and the estate amounts to one hundred *suvernas*, five must be first set apart for the eldest; half of that, or two *suvernas* and a half for the middlemost; and one and a quarter for the youngest: eight *suvernas* and three quarters being thus appropriated, the residue, amounting to ninety one *suvernas* and a quarter, should be equally divided. Such is the whole sense.

SINCE "equal shares" (XXXIX 1) suppose partition made by sons, after the demise of their father; and the deduction of a twentieth part and so forth is thus propounded (XXXIV) after premising partition subsequent to the death of the father (XVIII); is not that deduction unconnected with a distribution made by the father himself? No; for MENU has supposed the deduction of a twentieth part and so forth in the case of partition made by the father: else he would not have ordained an equal distribution in the case of a common exertion among brethren (XXIX); for equal partition

would be a matter of course. Therefore unequal division takes place even in the case of partition made by the father : and the deduction of a twentieth part and so forth constitutes that unequal division, as abovementioned ; for he has declared no other mode.

## XXXV.

**MENU:**— IF brethren, once divided and living again together as parceners, make a second partition, the shares must in that case be equal; and the first born shall have no right of deduction.

ATTENTION to priority of birth is thus forbidden, in the case of a second partition made among brothers who were reunited. By the texts which immediately follow (Chap. 9, v. 211 and 212), if any one of the brothers die, his uterine brothers and sisters shall divide his share. In the next (v. 213), the greater share in right of primogeniture, comprising the twentieth part and so forth, is denied to an eldest son, who is not virtuous. By the following text (v. 214), all those brothers, whether first born or younger, who are addicted to any vice, lose their title to the inheritance. Virtue, as well as primogeniture, is declared requisite. The subsequent text (v. 215 and XXIX) cannot relate to unequal partition of another kind ; for the right of primogeniture is the subject considered. But the word "never" bears an allusion to the greater allotment on account of filial piety or the like, as mentioned by other sages : it does not intend that alone; for it is wrong to assume an argument from an allusion to what has been propounded by others, wholly neglecting what had been said by *the author* himself.

IT is asked, if a man have five sons, what shall be the shares of the others besides the eldest, middle, and youngest ; for **MENU** has not propounded their additional portions ? The answer is, there are no others, for the eldest is the first born of all the sons ; the youngest, the last born ; and all the intermediate sons are middle. **MENU** himself makes this evident.

## XXXVI.

**MENU:**— The eldest and youngest respectively take their just

just mentioned pottions; and if there be more than one between them, each of the intermediate sons has the mean portion, or the fortieth.

"Just mentioned;" declared in the preceding texts. "The mean portion;" a fortieth part: and that shall be given to each of them, not a single fortieth part distributed among all the intermediate sons; for that would be an unjust disparity. Consequently one part in twenty, and the best chattel, shall be given to the eldest, and the several portions ordained shall be allotted to the rest. Such is MENU's intention as expounded by CHANDE'SWARA: and that must be understood both in the case of partition made by a father, and in that of partition made by brothers.

### XXXVII.

**MENU:**— Of all the goods collected, let the first born, if he be transcendently learned and virtuous, take the best article, whatever is most excellent in its kind, and the best of ten cows or the like.

HERE also, as had been already mentioned, he shall take the best of all the chattels. In the preceding text (XXXIV) one part in twenty was ordained; but in this text, one in ten, that is, the best of ten chattels. Such is the difference. Texts of GO'TAMA, BAUDHA'YANA, DE'VALA and others, to the same purport, will be cited.

### XXXVIII.

**MENU:**— But, among brothers equally skilled in performing their several duties, there is no deduction of the best in ten, or the most excellent chattel; though some trifle, as a mark of greater veneration, should be given to the first-born.

WHAT had been said, "of all the goods collected, let the first born take whatsoever is most excellent in its kind," is not applicable to the present case: a trifle only, as suggested by the phrase, "let the first born take the

best article." shall be given to him, as a mark of greater veneration, or as evidence of increasing respect. In what case shall this be done? The legislator explains it; " among brothers equally skilled in performing their several duties :" if all the brothers be equally assiduous in the study of scripture, in the use of arms, in commerce, in service or the like, one part in ten shall not be given to the eldest; and since that is merely illustrative, one part in twenty also shall not be given: but one excellent chattel only shall be given.

## XXXIX.

MENU:—If a deduction be thus made, let equal shares of the residue be ascertained *and received*; but if there be no deduction, the shares must be distributed in this manner:

2. Let the eldest have a double share, and the next born, a share and a half, *if these two clearly surpass the rest in virtue and learning*; the younger sons must have each a share: *if all be equal in good qualities, they must all share alike*: thus is the law settled.

THE first hemistich has been *already expounded*. The lawgiver propounds the share of an eldest son in another form; "but if there be no deduction &c." If that be not done, which has been thus directed, "of all the collected wealth, let one part in twenty be first allotted to the eldest son, and so forth;" *in other words*, if that portion be not set apart, then this distribution, which will be mentioned, must be made of all the collected wealth. The sage propounds it *in the second verse*. Of all the goods collected let the eldest take two shares; the next born, or second brother, a share and a half; and the rest, a share apiece. Add one to the number of sons; to this doubled, again add one, and divide the amount of the heritage by this divisor; the quotient is a share: give four such shares to the eldest brother, three to the second brother, and two to each of the others. For example; let the sum be seventy eight *suvernas*, to be divided among five brothers: seventy eight *suvernas* being divided into thirteen parts, each share amounts to six *suvernas*; and the portions are ascertained at twenty four *suvernas* for the eldest, eighteen for the second, and twelve for each of the others.

THUS MENU delivers four modes of unequal partition ; and since partition cannot be made four ways in the same case, it must be affirmed, that he intends a distinction according to circumstances. Such is the opinion of CULLU'CABHATTA, CHANDE'SWARA and others. VA'CHESPATI BHATTA'CHARYA gives a similar exposition, but adds ; 'in the case of partition by a father, the deduction of a twentieth part and so forth shall not be given to the eldest son to increase his portion ; for that belongs to the subject of partition among brothers. The portion of an eldest son and so forth, which is ordained in the several texts, wherein partition made by a father is propounded, should alone be allowed in the case of a partition made by him. Those texts follow.

## XL.

BAUDHA'YANA, citing the scripture :— “ *Let equal shares be given to all without distinction, or let the eldest deduct the most excellent chattel:*” or let the first born take one of ten cows and the like, and let the rest share equally.

HE directs the best chattel to be given to the eldest, and one out of ten cows or other decade of homogeneous things.

## XLI.

DE'VALA :— THE mean portion, or *fortieth part*, is ordained for sons, who have equal pretensions; but let the tenth part of the heritage be given to the eldest, who conducts himself strictly according to law.

THE sage directs, that the tenth part of the heritage shall be allotted to the eldest ; and the mean portion ordained by MENU, or one part in forty, to the others.

## XLII.

APASTAMBA :— HAVING satisfied the eldest with one chattel, let the father, who makes a partition in his life time, assign equal shares to his sons, but exclude one who is emasculated, insane, or degraded.

' HE ordains, that one chattel only shall be given to the eldest; but equal shares to the other sons. From the mutual disagreement of these texts, the rule of decision must be urged according to their different imports. If the eldest be transcendently virtuous, and the rest be not virtuous, *the partition shall be made in the second mode propounded by BAUDHA'YANA (XL); that is, one part in ten shall be allotted to the first born if the eldest have some virtue, and the others none, a tenth part must be given to the first born in addition to his share of the residue, and a fortieth to the others, as ordained by DE'VALA (XLI): if all be deficient in virtue, one chattel, as directed by APASTAMBA (XLII), shall be given to the eldest in addition to his share, and that chattel shall be the best article, for this coincides with the first mode propounded by BAUDHA'YANA.*

THE text of DE'VALA may also be applicable to the case, where the eldest son is transcendently virtuous, and the rest have some good qualities, for the same commentator has so said in treating of another case, where four shares are allotted to the eldest son. CHANDE'SWARA appears to have entertained the same notion, for he inserts these texts under the title of partition made by a father, but places the texts of MENU and the rest under the title of partition among brothers after the death of their father, however, he has further inserted the following text under the same title

## XLIII

SANC'HA and LIC'HITA:—To the eldest son a bull shall be given; to the youngest, a house other than the father's habitation.

AND this is enjoined even without the father's acquiescence, if the eldest and youngest sons be virtuous, else the precept would be nugatory. This is also admitted by HELA'YUDHA. May not this text concern partition among brothers after the death of their father; since the phrase, "other than the father's habitation," suggests the father's decease? No, for it occurs under the same title with the following text, in which partition by a father is evidently intended.

## XLIV.

SANC'HA and LIC'HITA:—IF there be one son, let *the father* himself reserve two shares, and the best of the slaves and cattle.

THE meaning of the text is this; having taken, as an additional portion, one of the bipeds and quadrupeds, a male or female slave, and a cow or the like, let the father reserve for himself two shares: and in the former text, “other than the father's habitation” signifies excepting the house inhabited by the father. The word (*avasthāna*) from its etymology bears the sense of locality. It should be here remarked, that the additional portion thus ordained is intended as a token of greater veneration towards the father, like the portion of an eldest son; and it must be allotted to him, even though he be deficient in virtue. If he be virtuous, then more must be allotted in proportion to his good qualities. What more? In answer to this question, the portions, mentioned in texts relative to the share of an eldest son, are adduced. In this instance the equality of the father and eldest brother should be acknowledged. But that has not been mentioned by VĀCHESPATI BHATTACHĀRYA: he considers both texts of SANC'HA and LIC'HITA as relating to partition among brothers; for one (*ēca*) is explained ‘chief, other, ‘alone’ (AMERA’s dictionary). “One son;” the chief son; that is, the eldest son: he may reserve two shares for himself, as directed in the following text.

## XLV.

VRIĪHASPATI:—THE eldest, or he, who is pre-eminent by birth, science, and virtuous qualities, shall receive two shares of the heritage; the rest shall share alike: but he is venerable like their father.

THERE is this difference only; the first text (XLIII) imports, that he shall further receive some trifle, such as a chattel. In the Pārijāta also, “one son” is explained eldest son; and the sense of the second text (XLIV) is thus obvious. But the author of the *Bbhāṣya* reads *yady ēcab syāt*, if he be single, instead of *yady ēca putrab syāt*; and expounds that reading, ‘if he be single,

single, or have lost his wife, he may reserve two shares; but, if his wife be living, he must satisfy her with another share: and he may take one of the bipeds and quadrupeds in addition to the two shares reserved.' Its consistence with the text of YĀJNYAWALCYA, "or divide the estate among them in equal shares" (XXVI), must be established by HELAYUDHA, by the author of the *Bhāṣya*, and by CHANDE'SWARA, explaining that text as relating to the case, where all are deficient in virtue: the apparent contradiction is reconciled by VA'CHESPATI BHATTĀ'CHA'RĀYA, referring one text to the case of an eldest son very deficient in virtue: on this subject nothing is directly stated in the *Vivāda Chintāmeni*, *Dāyatatwa*, works of JIMŪTA-VA'HANA and other books. But the uncertainty as to what adjustment should be made, if both the eldest and second son be virtuous, is a reproach to the gloss of CHANDE'SWARA and the rest, and to that of VA'CHESPATI BHATTĀ'CHA'RĀYA. Again; the text of DE'VALA "the mean portion &c." (XLI), is also explained by VA'CHESPATI BHATTĀ'CHA'RĀYA, from parity of reasoning, as implying partition among brothers. *But* were it so, why should not *all* texts, which relate to partition among brothers, be also adduced in the case of partition by a father, since a question can be thereby satisfied. This should be discussed.

TEXTS, which propound the portion of an eldest brother in the case of partition among brothers, are here cited incidentally. The text of MENU (XXXIV) and others have been *thus* quoted and explained. As for this text of MENU (XXXIV), *its sense is*, 'if there be many sons by one mother, and all virtuous, but the relative degree of virtue decline in the order of birth, then a twentieth part of the collected wealth shall be deducted for the eldest son, and the best of all the chattels shall be given to him; half of that, or the fortieth part, with the mean chattel, shall be given to the middlemost; and a quarter of it, or the eightieth part, with the worst chattel, shall be given to the youngest.' Thus CHANDE'SWARA comments on the text. Here, it should seem, the mean chattel for the middlemost, and the worst chattel for the youngest; though not directed by the text, are asserted from their parity with the sum of the portion allotted to the eldest. Some lawyers contend, that this should not be admitted on the *simple* affirmation of CHANDE'SWARA: the relative degree of virtue, declining in the order of birth, can only be well

applied to the case of three brothers ; else, since no fourth or fifth share has been propounded, and since the precedent reasoning, which shows the same additional portion for all the intermediate brothers, would be irrelevant, the text could not be fitly applied. In fact, "youngest" (XXXIV) may signify the third brother ; the fourth brother, the fifth, and the rest, even though virtuous, have no additional portion, since none has been ordained by the sage : this we hold reasonable. It disagrees, however, with the gloss of CHANDE'SWARA on a text which will be cited. To this some object, that the supposed case of relative degrees of virtue declining in the order of birth is nugatory ; even among brothers equally virtuous, a greater portion must be given to the first born, for he is preeminent : in the uncertainty what should be given, the double share mentioned by MENU should be allotted to him, as the greatest portion in comparison with the rest ; to the youngest should be allotted the smallest of all the portions specified by MENU. That cannot be ; for MENU himself (XXXVIII) denies a deduction among brothers equally endowed with good qualities ; and the text is so expounded by CULLU'CABHATTA. Consequently that should not be admitted. It is proper to allow some chattel in right of primogeniture : and something should be given, in right of preeminence in virtue, proportionate to the degree of it ; that something should be the best of all the chattels, for this coincides with the text of BAUDHAYANA (XL). We cannot therefore determine, why a mean chattel for the middlemost, and the worst chattel for the youngest, unnoticed by CULLU'CABHATTA, are asserted by CHANDE'SWARA. It should not be argued from the following text, because "successively" signifies in order, that the eldest shall have the best chattel ; the middlemost, the mean chattel ; the youngest, the worst. That term relates only to the allotment of dwelling houses.

## XLVI.

HĀ'RITA:—WHEN a herd of kine is to be divided, let the rest of the brethren give a bull *in lieu* of the best chattel to the eldest brother, or give him the best portion ; leaving to him the images of deities and the patrimonial house, let them remove and erect other habitations: or if *they* remain in the same court, the best apartment

assigned to the eldest, and successively *the next best* to the others.

The sense of the text is this; let a bull, *in lieu* of one chattel, that is, *in lieu* of the best chattel, be given to the eldest: this shall be given over and above his share. The lawgiver subjoins an alternative; or the best and most excellent portion: the text must be so supplied. "Deities;" images of VISHNU and the rest. "The house;" that, which was built by their father; the ancient abode of the family, and so forth: this supposes one only house. Shall the rest remain without a habitation? Therefore does the sage add, let them remove; and erect habitations beyond the limits of the court or yard. But, if they cannot remove and erect other houses, then, says the legislator, the best quarter shall be assigned to the eldest. CHANDESWARA so expounds the text. "If they remain in the same court," or in the house built by their father, *such an arrangement shall be made.* In the Retnacara the term used in the text (*dātśbinā*) is explained best: that shall belong to the eldest; and successively the mean apartment, to the middlemost; and the worst, to the youngest. Some explain the term *literally*, the south quarter; for that is best: successively, east, north and so forth; shall quarters be assigned to the rest.

The text of MENU (XXXVI) is thus expounded in the Retnacara; "if the eldest and youngest be virtuous, and several intermediate sons be deficient in virtue, the eldest and youngest respectively take the twentieth and the eightieth parts, and all the intermediate sons take a single fortieth." But, if the intermediate sons be virtuous, each of them shall receive a fortieth part. Should the eldest alone be virtuous, he shall take the best article out of all the goods collected (XXXVII). If the eldest surpasses the rest in virtue, and they have good qualities in a moderate degree, though somewhat inferior to the youngest, then GOTAMA propounds the rule of distribution.

## XLVII.

GOTAMA:—A TWENTIETH part of the heritage, a pair of kine, a car, with the beasts which have teeth in both jaws, (namely horses, asses, and the rest,) and the bull kept for im-

pregnation, shall belong to the eldest; cattle blind of one eye, or old, and those, of which the horns are broken, and the tail hairless, shall belong to the middlemost, if there be two or more *head of such cattle*; a ewe, some grain, a little iron, a house, a cart and yoke, and one of every sort of quadruped, shall belong to the youngest; the residue shall be equally divided.

" A TWENTIETH part;" the twentieth part deducted as abovementioned: a pair of kine: " beasts, which have teeth in both jaws," as horses, asses and the like: " a bull;" one capable of impregnating the cows: this deduction shall, if possible, be made for the eldest. " Old;" aged: " the horns of which are broken;" which have broken horns: " and the tail hairless," of which the tail-bone is destitute of hair: this deduction shall be made for the middlemost, provided there be two or more *head of such cattle*. An ewe, some grain, a little iron, one house, a cart, *a pair of oxen*, and one of every kind of quadruped, cows and the rest, shall be deducted for the youngest. The residue shall be equally divided. Such is the exposition conformable with the gloss of CHANDESWARA. But, if there be no cows blind of one eye and the like, what shall be done? The answer is, some trifle must be given as an equivalent. It should not be argued, that, like a promised sacrifice, if effects be wanting, nothing shall be given. When the thing is ascertained, and the question be relative to the act, in this form, " what shall be done with this thing?" then alone, on failure of the thing, the act is annulled: but, when the gift is ascertained, and the question be " to whom shall it be given?" which is answered by the command, " give it to such a one;" then, on failure of the thing, it is reasonable, that an equivalent should be given. Thus do some lawyers expound the law.

## XLVIII.

APASTAMBA:—IN certain countries, a *suverna*, a black cow, and the black produce of the earth, devolve on the eldest son, together with the utensils of the common father.

" BLACK produce of the earth;" as *tiles*, *pease* and the like. " Utensils;" vessels for eating and so forth.

BAUDHA'YANA :—ON the death of the father, the portion of an eldest son is, in the order of the four classes, a bull, a horse, a goat, and a sheep.

" IN order ;" that is, a bull shall be the portion of a Brāhmaṇa; a horse, of a Cshatriya, a goat, of a Vaiśya, a sheep, of a Śūdra. According to ŚRĪ CR̄IŚNA TERCALANCA'RĀ, Śūdra here signifies the son of a man of the servile class by a woman of the same tribe; there is no inconsistency. But according to RAGHUNANDANA and others, the term here signifies one born of a woman of the servile class by any father, whether of the sacerdotal or other tribe.

## L.

VASISHT'HĀ :—PARTITION of heritage among brothers shall be thus made: the eldest shall take a double share and the tithe of cows and horses; the youngest shall have the goats and sheep, and one house; the sword and other black iron, and the furniture of the house shall belong to the middlemost.

SINCE the particle connects the tithe of cows and horses with what had preceded, this also shall accrue to the eldest. How many goats and sheep shall belong to the youngest? as many as possible. The middlemost shall have the sword, which is made of iron, the pestle and mortar, and the rest of the furniture.

FROM the mutual contradiction of these texts, the partition is regulated by authors, determining the degrees of virtue. That shall be now recapitulated. 1st VA'CHESPATI BHATTĀ'CHARĀYA considers the text of MENU (XXXIV) as applicable to the case, where many sons inherit the estate, and the degrees of virtue, they possess, decline in the order of birth. CHANDE'S-WĀRA concurs in that exposition and remarks, that "the youngest" signifies one born after all the rest, and that all the intermediate sons shall have a fortieth part. We understand by the word "youngest" in this

place, the third son : the deductions for the fourth son and the rest shall be successively half of that which preceded. Some also admit this deduction in the case of partition by a father : but that is not approved by VĀCHESPATI BHATTĀCHA'RYA nor by CHANDE'SWARA ; and nothing is expressly said on this point in the works of JĪMU'TAVĀ'HANA and the rest. 2dly. According to the gloss of CHANDE'SWARA on the text of MENU (XXXVI), if both the eldest and youngest be virtuous, and the intermediate brothers be deficient in virtue, the eldest and youngest respectively share as deductions the twentieth part and the quarter of it; and all the intermediate brothers share a single deduction of a fortieth part; but, if the intermediate sons be virtuous, each of them shall deduct a fortieth part. VĀCHESPATI BHATTĀCHA'RYA holds, that, if all be equally virtuous and learned, the eldest and youngest respectively share the twentieth part and the quarter of that deduction, and each of the intermediate brothers has a fortieth part. We affirm, that, the intermediate brothers being less virtuous than the eldest, and either less or more virtuous than the youngest, the rule must be settled in one or the other of the two modes proposed by CHANDE'SWARA. 3dly. When the eldest is transcendently virtuous, and the rest deficient in virtue, the rule is assumed in the *Retnācara* from the text of MENU (XXXVII). VĀCHESPATI BHATTĀCHA'RYA concurs therein, but expounds the text, ' of all the goods collected let the first born take the best article in each sort.' 4thly. CULLU-CABHATTA appears to consider the text of MENU (XXXVIII), as regulating the case, where all are equally virtuous. The text of HA'RITA (XLVI) intends the same case. But JĪMU'TAVĀ'HANA says, 'there shall be no deduction of the best in ten cows or the like?' 5thly. When the eldest, and he, who was born next after him, possess the good qualities described, and the others are deficient in virtue, the rule is deduced by VĀCHESPATI BHATTĀCHA'RYA from the text of MENU (XXXIX 2). But some hold this rule applicable when the eldest is transcendently virtuous, and any one younger son is less virtuous in the subdule proportion. 6thly. According to some lawyers, these texts of MENU are also applicable to partition by a father. From the text of GO'TAMA (XLVII), CHANDE'SWARA deduces the rule, when the eldest surpasses the rest in virtue, but they possess good qualities in a moderate degree. Some consider this rule as applicable when the eldest possesses the science and practice

suitable to his own class. 7thly. The rule of 'APĀSTAMBA' (XLVIII) should be adduced when the eldest possesses virtue in an inconsiderable degree. 8thly. In the *Rāmācāra*, the text of BAUDHĀYANA (XLIX) is applied to partition in the same circumstances. But some consider it as intending the same case with the text of MENU (XXXVIII). 9thly. From the text of VASISHTHA (L), VA'CHESPATI BHATTACHARYA deduces the rule when the eldest has a double degree of virtue, and the rest one degree each. 10thly. CHANDESWARA assumes it, when the eldest is transcendently virtuous, and the rest simply virtuous; but he has inserted this text, after premising partition among brothers by two or more mothers. Modern lawyers deduce from this text a rule for the case, when the eldest son is endowed with an assemblage of good qualities, science, conduct, care of his brethren and so forth. 10thly. From the text of DEVĀLA (XLI) HELLAYUDHA and the Pārijāta deduce the rule when the eldest is versed in scripture, and the rest are deficient in virtue: they explain "the mean portion," the deduction of a twentieth. Others, says CHANDESWARA, adduce this text, when the eldest is skilled in sacrifice with fire and in the study of the Vēdās, but the rest are simply virtuous: the mean portion signifies the deduction of a twentieth. VA'CHESPATI BHATTACHARYA concurs therein, but explains "mean portion," the deduction of a fortieth. 11thly. CHANDESWARA, from the texts of VRĪHPATI (XLV) and GOTAMA (LI), deduces the rule when the eldest is transcendently virtuous and the rest are deficient in virtue. But VA'CHESPATI BHATTACHARYA expounds it; if the rest have good qualities in a small degree: he thinks, that the eldest could not be said to surpass the rest in science, unless they possess learning in a small degree. It must be also affirmed, say some lawyers, that he supports his brethren like a father; for he takes a superior share like a parent, and the text describes him as equally venerable with their father. It should be here considered, that one excellent chattel must be given to the father's first son; should he be versed in the science suitable to his class, a deduction should be allowed in proportion to his knowledge; if he support them, like a father, from their early infancy, he may take an unequal share; and if his conduct be strictly proper, another chattel should be assigned to him. This may be argued from common sense or from the reason of the law. Since it is not otherwise expressed, all besides the eldest and youngest are middlemost,

middlemost, that is, *intermediate*. VĀCHESPATI BHATTĀCHĀRYA considers the equality of allotment mentioned in the text of VRĪHASPATI (XXX) as applicable to the case, where the eldest is deficient in virtue, but the rest are equal to each other in good qualities. The same must be also understood in respect of property acquired by the common exertion of several brothers, even though deficient in good qualities. The text of MENU (LII) forbids the deduction of a twentieth part in favour of an eldest brother, who defrauds his juniors, for CULLUCA BHATTĀ expounds, “deprived of his own share,” deprived of the share to which he would have been entitled on account of primogeniture.

## LI

GO'TAMA:—OR the first born shall have two shares, and each of the rest one.

## LII

MENU:—ANY eldest brother, who from avarice shall defraud his younger brother, shall forfeit the honours of his primogeniture, be deprived of his own share, and pay a fine to the king.

ON this subject modern lawyers say, if the brethren be void of offence, the portions of younger brothers decrease, with the order of birth, in a sub-duple proportion to the deduction of a twentieth part. That the deduction of a twentieth part shall belong to the first born of all the sons, is natural if he be endowed with science and virtue, twice as much, or a tenth part, shall be allotted to him. In like manner, if the intermediate sons be also endowed with science and virtue, they shall have the double of their own *regular* portions. But, if the eldest support and educate his brothers like a father, one additional share shall be assigned to him as to a parent, in like manner, if the middlemost or youngest do so, half a share, or a quarter, or the like, shall be allotted to them “next born;” in the text of MENU (XXXIX,2), is merely an instance. The allotment of a pair of oxen and so forth (XLVII), is regulated by the various degrees of virtue and good conduct. If younger brothers surpass their elders in virtue, there is no deduction of the best

in ten (XXXVIII), but some trifle should be given to the first born. Should he offend by defrauding his younger brother, an equal share only shall be allotted to him; even though he have both good and bad qualities, nothing shall be given as a mark of veneration: like the fine to the king, this also is another penalty imposed on him.

If the deduction of a twentieth part and so forth, in favour of the first born and the rest, do not occur in these days, the uncensured practice of good men, or the contumacy of younger brothers, is the ground on which it is disused, not the want of elder brothers entitled to that deduction, for even now are found elder brothers versed in science, skilled in arms, and so forth.

Is the deduction of a twentieth part ordained for partition among brothers in general, whether by the same or by different mothers, or among uterine brothers only? To this VĀCHESPATI BHATTĀCHAR'YA replies, 'the double share mentioned by VRĪHASPATI (XLV) concerns uterine brothers only; for, having delivered in this text a precept couched in general terms, the sage specifies a distinction in the following text, which ordains the delivery of the deducted allotment, and relates to that alone.'

### LIII.

VRĪHASPATI and MENU:—ALL the sons of twice born men, produced by wives of the same class, must divide the heritage equally, after the younger brothers have given the first born his deducted allotment.

The text of BAUDHAYANA, "let the first born take one of ten cows &c" (XL), those of MENU (XXXVII and XXXIV), and the text, which ordains equal shares, may also concern half brothers by different mothers.' His meaning is this; from the terms of the text of VRĪHASPATI (LIII) and the rule of VISNU (LIV), it appears that a deduction should only be given to the first born, not to the middlemost also. That deduction is of three kinds; the best, as propounded by MENU (XXXVII), the mean proportion, as ordained by BAUDHAYANA (XL), the worst, as specified by

\* MENU, C 20 5, v 156 but here cited as a text of VRĪHASPATI.

MENU (XXXIV). By affirming three modes of deducting the portion of the first born, three questions are satisfied, and texts, which propound other forms of deduction, are not admitted *in this case* no deducted allotment is given to the rest, their good qualities need not be examined

## LIV.

VISHNU.—LET sons, produced by wives of equal class, receive equal shares, but give the best chattel with a deducted allotment to the first born.

BUT modern lawyers hold, that the several texts should be adduced, if a brother be endowed with such and such good qualities JI MUTHAVAHANA also considers the text of VRISHPATI (XLV) as applicable to uterine brothers only. But CHANDESWARA, after premising ‘partition among brothers by several mothers,’ inserts the text of MENU (XXXIX 2) and the rule of GOTAMA (LI), and attributes to them a similar import with the text, which propounds the deduction of a twentieth part MENU, having propounded four or five cases of deducted allotments, and not expressly noticing the general subject of partition among sons born of different mothers, proceeds to the succession of an elder son born of a wife last married For this reason CHANDESWARA has supposed no difference in respect of the double share and the like, between sons born of different mothers or born of the same mother. VACHESPATI MISRA concurs in that opinion The text cited (LIII) is a mere repetition, after declaring unequal partition among sons produced by wives of different classes, to obviate the same *supposition* in the case of wives equal in class, it does not distinguish between the share increased by a twentieth, and the equal share, for both depend solely on the qualities of the brothers. Consequently, under the term “ deducted allotment ” an equal share is comprehended as well as the share augmented by a twentieth part of the heritage, it is not proper to deduce any consequence solely from the literal sense of the term “ deducted allotment ” Else, the deduction of a twentieth part might be assigned to an eldest brother of the half blood, who may be deserving of that allotment, but the portion of an elder brother could not be given to one, who should merit a double share were it so, the disparity would be great and unjust. Such is their meaning.

## LV.

MENU:—A YOUNGER son being born of a first married wife, after an elder son had been born of a wife last married, it may be a doubt in that case, how the division shall be made:

2. Let the son, born of the elder wife, take one most excellent bull deducted from the inheritance; the next excellent bulls are for those, who *were born first*, but are inferior on account of their mothers, who *were married last*.

THIS doubt arises in the case of two or more sons produced by wives equal in class; for partition of heritage among sons of various classes will be subsequently propounded.

The *Rathacara*

LET the first born (*pūrvaya*), that is, the son born of the elder wife, though in fact last born, take one most excellent bull.

GULLUĀBHĀTTĀ.

THE author of the *Pracāra* concurs in that exposition. This deduction is allotted to the younger son born of a first married wife, because his mother is the wife married from a sense of duty; for she is described in the text of DAŚĀ (Book IV, v. LI). But, if the first wife be barren; from the second wife a younger son be born; and from the third, an elder son; it should seem, that the bull shall be given to the son of the second wife: for "the elder wife" is here a general expression; and the allotment is only grounded on the text, since reasoning is not adduced. However, this argument does exist; that, as respect is due to brothers born before them, from those who are born last, so is respect due from wives last married to those married before them. "Elder wife" signifies earlier married; "younger wife" signifies later married. The senior and junior rank of wives is not regulated by their age; for the term is explained in the *Rathacara* and other works, 'first married or earlier espoused.' "The text excellent bull;" others, less excellent than that,

which

which is deducted for *the son of the elder wife*, belong, one each, to those, who are inferior; that is, who are inferior to the son of the elder wife, because they are sons of a younger. The seniority of the mother prevails over that of the son. The text supposes many inferior sons born of younger wives. "On account of their mothers," in the order of their mother's rank. Consequently the son of the eldest wife shall take the most excellent bull; the son of the intermediate wife, a bull somewhat inferior to the first; the son of the third wife, one inferior to this also; and so forth. Thus should seniority be acknowledged according to the rank of the mother. But if the son of the elder wife be also elder than his brothers, the same lawgiver propounds a distinct rule.

## LVII.

**MENU:**—A SON, "indeed, who was first born, and brought forth by the wife first married, may take, if learned and virtuous, one bull and fifteen cows; and the other sons may then take, each in right of his several mother; such is the fixed rule.

## LVIII.

**MENU:**—As between sons, born of wives equal in their class and

and without any other distinction, there can be no seniority in right of the mother, the seniority, ordained by law, is according to the birth.

SINCE there is no distinction between sons born of wives equal in their class (for there is in that case no difference arising from class;) there can be no seniority as abovementioned in right of the mother. But, if the wives be of various classes, since the sons are of the same tribe with their mother, it would be an unfit proceeding to regulate seniority by birth, whereby the *Gshatriya* and the rest might precede the *Brâhmaṇa*. In that case, therefore, seniority in right of the mother must be admitted; but in this, since the wives belong to the same class, the seniority of sons, who are consequently equal in class, must follow the order of birth. Such is the opinion delivered by the author of the *Pracâsa*.

BUT CULLUCA BHATTA thinks both opinions are approved by MENU. Consequently, should the seniority of the mother and superiority of class be opposed to each other, an alternative must be allowed. As one precept of the *Veda* directs "take sixteen jars of rice and milk in the sacrifice performed through the night and called *atirâtra*;" and another precept of the *Veda* directs, "do not take sixteen jars of rice and milk in the sacrifice called *atirâtra*;" and two precepts being thus contradictory, an alternative is allowed; so, in this case also, a practical alternative must be accepted in this world. For example, if the son of the elder wife be virtuous, and the son of the younger, though first born, be deficient in virtue, then the son of the elder wife shall take the most excellent bull; but, if the eldest son, born of the younger wife, be virtuous, he shall take it. The alternative must be therefore regulated by the good qualities of the sons. The allotment of an elder son's portion, determined by the good qualities of the son, is noticed by VRISHPATI (XLV) Should the eldest by birth surpass the rest in science and the like, he shall have the best deduction; a single bull is ordered for one deficient in virtue; a bull and fifteen cows for one moderately virtuous: but this deduction depends on the seniority of the mother. According to this interpretation it is evident, that even an elder brother of the half blood shall have a double share, if he

surpassesthe rest in virtue: MÉNU almost expressly declares, that other brothers, though born of different mothers, shall have a deducted allotment. Both commentators think these texts of MÉNU imply the admission of seniority in right of mothers, because he declares, that the deductions for others besides the first born shall be regulated by the rank of the mothers. That is liable to objection.

HELA YUDHA expounds 'first born (*púrvaja*) born at an earlier time, senior in age, and so forth. The next excellent bulls, that is, others less excellent than the best, shall be duly distributed, one to each, among those who are inferior, (that is younger in age than the first born,) on account of their mothers, or in the order of precedence appertaining to their mothers.' He thinks the right of the first born to the portion of an elder brother can be established by reasoning, because he is more venerable than the son of the elder wife married to complete the father's rites of initiation, since he benefits his father by delivering him from the hell called *put*, and by other services; and since he is qualified to perform his obsequies, competent to support the rest of the brethren, entitled to respect, and strict in his conduct. As in the case of two inconsistent texts of law, that prevails, which can be justified by the best arguments; so, from parity of reasoning, in the case of contested inferences from the same law, the prevalence of one should be established by argument. In mentioning the deducted allotment successively taken by sons in right of their several mothers, it is supposed, that they are sons of mothers unequal in class, as is evident from the subsequent text (LVII). The verse, which will be hereafter cited (LX 2), must be considered as relating to the virtuous son of a Bráhmane wife; and the preceding text (LV. 2) must also relate to the son by a woman of the sacerdotal tribe.

THE opinion delivered by the author of the *Pracása* seems preferable. The alternative supposed by CULLÚCABHATTA is liable to eight objections. To the opinion of HE LA YUDHA a single objection may be made;

\* YÁJNAWALCYA :—If two texts differ, reason, or that, which reason best supports, most in practice prevail.

<sup>1</sup> Expecting to find the text at large cited in this work, I have omitted to place and number this quotation.

since the rule of partition among sons produced by wives unequal in class will be delivered by the legislator in another place, it is wrong to suppose it implied in this. Let it not be said, that he supposes the deducted allotment should be given to sons in right of their mothers, not in the order of their class, but in that in which the several mothers were espoused, since he has not expressly declared his meaning. Were it so, the claim in right of mothers being admitted on the grounds of the text, without argument from reasoning, it would be proper to expound "first born" (*पुरुजा*) son of the elder wife. Or the following must be the sense of the text as expounded by HELĀYUDHA, the first born, or he, who delivers his father from the hell called *put*, shall take one most excellent bull, the next excellent bulls shall be distributed among the younger brothers "on account of their mothers," that is, according to the number of mothers, not according to the number of individual sons, for it may coincide with the texts of VRĪHASPATI and GOTAMA (LXII and LIX). This supposes an equal number of sons by each mother, or the deduction may be computed from the number of mothers, even though the number of sons be unequal, merely because it is so directed in a text of MENU.

## LVIII.

**GOTAMA:**—ONE bull shall be the additional portion of an eldest son, *born of a wife last married but of equal class*, or, if produced by the first married wife, he shall have a bull and fifteen cows, or the same deduction, which is granted to an elder son born of a wife last married, shall be received by a younger son born of an elder wife.

On the exposition of CULLU'CABHATTA the meaning of the text is obvious. It is thus expounded in the *Retnacara* "one bull shall be the deducted allotment of a son produced by a wife equal in class but not first married; it coincides with the text of MENU (LVIII). "Produced by the eldest wife, &c" that is, an eldest son, born of a first married wife, shall have a bull and fifteen cows" this coincides with another text of MENU (LVI) "If a younger son born of a first married wife be virtuous, the sage adds, "the same deduction shall be received by him,"

that is, a deduction shall be received by a younger son born of a first married wife, in the same mode, in which a deduction is received by the eldest son born of a wife last married.' The text of SANC'HA and LIC'HITA, already cited (XLII), is also adduced in the case of partition among sons by several mothers. "Eldest son" intends him, who delivers his father from the hell named *put*, as has been already remarked: and this allotment supposes both the eldest and the youngest to be endowed with good qualities.

## LIX.

**GO'TAMA:**—A SPECIAL partition may be made among sons by allotting one share to each of their several mothers, as shares are usually allotted to kinsmen. *Trilok* (in *Paribrahmanam*)

"As kinsmen," as brethren. When there are four, or five brothers, as one share is given to each brother, so, when there are many mothers, who have an equal number of sons, one share shall be allotted to each mother, because it is troublesome to divide the estate among the brothers. Afterwards a special partition among uterine brothers shall be made by those sons, with the deducted allotment of a twentieth part and so forth, if all were equal in class.

(*The Retnacara*.)

FROM the term "deducted allotment of a twentieth part," which occurs in the gloss, it should seem, that the deduction of a twentieth part and the like must be allowed even in the case of partition among brothers of the half blood; the allotment of a bull only must have been propounded by MENU and the rest, supposing the eldest to be deficient in good qualities. That, however, is questionable. This distribution, by the number of mothers, can only be adopted in the case of women belonging to the same class; for equal partition can only take place among their sons, and a different partition is ordained in the case of mothers unequal in class.

## LX.\*

**MENU:**—If there be four wives of a *Brahmana* in the direct

\* Cited again at V, CXXXIX,

order of the classes, and sons be produced by them all, this is the rule of partition *among them*:

2. The chief servant in husbandry, the bull kept for impregnating cows, the riding horse or carriage, the ring and other ornaments, and the principal melliage, shall be deducted from the inheritance and given to the Bráhmana son, together with a larger share by way of pre-eminence.

3. LET the Bráhmana take three shares of the residue; the son of the Cshatriyá wife, two shares; the son of the Vaisya wife, a share and a half; and the son of the Súdrá wife may take one share.

"In the direct order of the classes :" so the term is explained by CULLU-  
CA BHATTA. He holds marriages in the direct order of the classes to be legal.

## LXI.

YAJNYAWALCYA:—THREE wives in the direct order of the classes, two, and one, may be married by the Bráhmana, Cshatriya, and Vaisya, respectively.

"In the direct order of the classes," from which the girls sprung. "Respectively," three may be married by the Bráhmana, two by the Cshatriya, and one by the Vaisya. As YAJNYAWALCYA does not approve the marriage of twice born men with girls of the servile class, the number of "three" &c. is correct. The possible equal rank of the Cshatriyá wife and the rest, in the case of marriage contracted in the inverse order of classes, because, though inferior in the order of classes to the Brábmeni, they precede her in the order of espousals, is improper: as the son of a Cshatriyá wife, born before the son of the Brábmeni, has not the honours of primogeniture, so the Cshatriyá, even though first married, cannot take precedence of the Brábmeni wife; for MENU, using the word "solely" (Book IV, v. XLVI), makes it evident that precedence shall not be settled according to the order of their marriages, or the sequence of their ages.

"THE chief servant in husbandry, and the bull" (namely that, which is kept for impregnating cows), the horse or other cattle appertaining to the carriage, the ring and other ornaments, the habitation or principal messuage, and one share, shall be given, as a deducted allotment, by way of pre eminence, to the Bráhmana or son of the Bráhmen's wife in the partition of the heritage, he shall have three shares, as will be shown Why is one share mentioned as part of the deducted allotment, and three shares again assigned? Why not say at once, that he shall have four shares? The answer is, as in the case of sons belonging to the same class equal dominion is attributed to all (IV), but a deduction of a twentieth part and so forth is allotted to the eldest and the rest, as a mark of veneration for their good qualities, for their birth and the like, so in this case, it appears from the distribution ordained (LX 3), that such and such are the inherited rights of the Bráhmara and the rest, but a deducted allotment, consisting of one additional share and so forth, shall be given as a mark of veneration for the mother's class. Consequently, as no deduction of a twentieth is given, when the younger brother does not yield respect to his senior (and such is the present practice, but it is morally wrong like the omission of divine worship), so likewise, if the Cshatriya and other sons do not yield respect to the Bráhmana son, they need not give that additional share, but moral censure is the consequence of their refusal. Let it not be alleged, that the law, propounding a deduction of a twentieth part and so forth, is therefore nugatory. Like the law, which propounds the spurious quantity of a *purnapátra*\* and the like, this also is not unmeaning, for it is an explanatory precept. Should the youngest brother, through excess of piety or through ignorance, allow a greater deduction than the twentieth part or the like, it is illegal, his son or other heir may therefore rescind that distribution, and the law is consequently not unmeaning. But the treble share of the son produced by the Bráhmen's wife and so forth must be given by the rest, however reluctant. CHANDESWAPĀ thus expounds the text,

\* when partition is made, let a larger portion, *crescendo* of the treble share receivable by him, be given to the Bráhmana son. Hence, according to the *Retnácarā*, the distribution cannot be made by allotting shares to each mother for her sons, in the case of mothers unequal in class. Why may not partition be, nevertheless, made by allotting three shares to the Bráhman's wife

for her sons, two to the *Cshatriyá*, one and a half to the *Paisyá*, and one to the *Súdrá*? It cannot ; for such a distribution, allotting shares to mothers for their sons, has not been mentioned by GO'TÁMA and the rest. VRÍHASPATI renders this evident.

## LII.

VRÍHASPATI :—IF two or more sons were born of each mother, and they be equal in class and number, these brothers of the half blood may legally divide the heritage by allotting shares to their respective mothers for the benefit of the sons:

HENCE brothers of the half-blood, born of different mothers by the same father, may divide the heritage by making as many shares as there were mothers; provided they be equal in class, and in respect of the number of sons produced by each mother, and provided every mother have borne sons; and when the subdivision is made, every son receives an equal share. This has been ordained by VRÍHASPATI to facilitate partition: there is no real difference. The text of GO'TÁMA (LIX) intends this case alone; for the import coincides. May it not, therefore, be said, that, in this text, "equal in class and number" is merely illustrative; and the distribution may, for that reason, be made according to the number of mothers, even in the case of unequal number of sons by each mother? Therefore does the same legislator subjoin the following text:

## LXIII.

VRÍHASPATI :—AMONG brothers, who are equal in class, but vary in regard to the number of sons produced by each mother, the shares of the heritage are allotted to the males, not to their mothers.

If being necessary to restrict the text of GO'TÁMA, "equal class" should be argued as the limitation. It is remarked in the *Reteśvara*, that the text of VIŚNU (LIV) should be adduced in the case of unequal number of sons produced by each mother. Here an observation should be made; if

indeed the distribution by allotment of shares to mothers be ultimately a distribution of the heritage among the sons, and the partition be only made according to the number of mothers to facilitate the operation, such a distribution can only take place when all the sons are equally endowed with good qualities, not in a case where sons possess unequal degrees of virtue: for, were it so, the partition could not be well made with attention to the various deducted allotments. Or the distribution according to the number of mothers can only be made after setting apart the proper deductions. Let it not be argued, that, since the text of MENU, and that of VISHNU cited immediately after it (LIII and LIV), propound a deduction for the eldest alone, in the case of partition among brothers produced by different mothers, therefore no deduction shall be set apart for the rest. MENU has also suggested deductions for the rest by saying, "the other sons may then take, each in right of his several mother" (LVI). As it were, attributing the virtues of the son, and his right of primogeniture and the like, to his mother, the deducted allotment may be so given. For example; to her, who has two virtuous sons and one deficient in good qualities, two degrees of virtue are attributed: in like manner, to her, who bore the second, fifth, or seventh son, attributing such seniority, the deducted allotment may be so given.

THE texts of MENU and VISHNU ought to be considered as applicable to the case of sons equally endowed with virtuous qualities; to which case another text of MENU (LXXXVIII) also relates. Nor should the repetition be deemed a censurable *plagiarism*. Having ordained the allotment of three shares and so forth in the case of several wives taken from various classes, the mention of equal partition, to satisfy the doubt, what should be done in the case of several wives taken out of the same class only, is pertinent: and seniority should be understood in the order of birth, in right of which one chattel is deducted as above mentioned: that is consistent with the comment, delivered in the *Ratnâkara*. But LACSHMI DHERA and the Pârjâta expound the word *pûrvaja* in the text above cited (LV 2), son born of the elder wife; and they deem the text applicable to the case, where the son of the elder wife is endued with superior virtus, when compared with the eldest by birth. If the middlemost son, born of the elder wife, be alone virtuous, he alone should be considered as eldest. But in fact the first born ought

( 70 )

alone to be considered as eldest ; for he alone is variously celebrated, as delivering his father from the hell named *put* and so forth. MENU declares this in express terms.

#### LXIV.

MENU :—THE right of invoking INDRA by the texts, called *swabrahmanyā*, depends on actual priority of birth ; and of twins also, if any such be conceived among different wives, the eldest is he, who was first actually born.

A PARTICULAR text, called *swabrahmanyā*, is used by *Ch'bandōga* priests, in the *jyotiṣṭoma* sacrifice, for the invocation of INDRA. That single text, considered as many from the various modes of using it, is mentioned in the plural number. Under the authority of a positive precept, the invocation of INDRA, with a view to the invoker's father, can only be pronounced by the first son. As seniority is intended in the phrase " let the father of such a one perform the sacrifice," and as seniority is suggested in the *lātśūtra*\* (since the text expresses " among males and females, those who survive &c,") therefore seniority is attributed to the eldest survivor : it is not required, that he should be the son of the first married wife, for, were that required, it would be nugatory to consider the eldest survivor.

#### LXV.

DE'VALA :—IN low classes, the precedence of sons is regulated by the goodness of their disposition ; and of twins, the eldest is he, who is first actually born.

2. AMONG twins, to him, whose face kinsmen first see after his birth, belong the privileges of male offspring, the right of performing obsequies for his father, and the honours of primogeniture.

" WHO is first actually born," who first touches the earth " Of twins also".(LXIV), though conceived in the womb at the same instant, " the

\* If allusion has not been explained to me, it does, I believe, relate to a text of the *Veda*. T  
eldest

eldest is he, who was first actually born; that is, who first touched the earth. Should it be unascertained, which of them first touched the earth, what shall be the rule? DE'VALA also provides for this case (LXV 2): " Whose face kinsmen or parents first see ;" the verb is in the plural number because many, not the father and mother only, are meant. " Male offspring ;" the performance of duties incumbent on male offspring, and relief *afforded to the father* from the evil of wanting male issue : that should be acknowledged to belong to him ; else there would be no certainty, to whom the portion of an eldest son ought to be given. " For his father ;" this son is chiefly qualified to perform those duties towards his father, which must be performed by one alone, such as obsequies and the like. " The honours of primogeniture ;" the right of invoking INDR A in the *Jyotiṣṭhla* sacrifice and so forth, and the right of taking the portion of an eldest son and the like : that belongs to him alone. " Among twins ;" the dual is here indeterminate : the same rule is applicable to the case of three or more sons produced at one birth.

" IN low classes" (LXV); in servile tribes: by the term expressed in the plural number, mixed classes, which adopt the duties of the servile tribe, are comprehended in the text. Among these, precedence or seniority is regulated by conduct and good disposition: and that is similar to seniority in right of science and virtue; for *Sūdras* are not qualified to study the sacred sciences. But VĀCHES-PATI holds, that *Sūdras* have no additional portion in right of seniority by birth.

## LXVI.

MENU:—FOR a *Sūdra* is ordained a wife of his own class, and no other: all, produced by her, shall have equal shares, though she have a hundred sons:

FROM the words "equal shares" he infers, that no deduction shall be made in right of primogeniture; but the deducted allotment on account of good qualities, as mentioned by VRĪHASPATI, may be allowed; since the text has a general import.

## LXVII.

VRĪHASPATI:—OF those sons, he, who is endowed with science,

science and good qualities, is entitled to receive a greater portion.

BUT 'SRI CRISHNA TERCALANCA RA' says, 'this text (LXVI) has been propounded by MENU as an answer to those, who doubt what should be the distribution among Sudras, because they find a special distribution ordained among Brāhmaṇas and other sons produced by wives unequal in class; for Sudras, wives of one class only have been ordained, their sons shall have equal shares. The deducted allotment in right of seniority, such as prior birth, is not denied; for the import of the text is evident from the phrase, "no other wife is ordained;" and a deducted allotment is not a share.' According to all opinions, it must be established, that seniority in right of prior birth is admissible even among Sudras, so far as it concerns religious rites. If the eldest be transcendently virtuous, and the rest be deficient in virtue, the first born shall have two shares; as ordained in the rule of GO'TAMA above quoted (LI). But, if all be equally virtuous, GO'TAMA propounds another distribution.

## LXVIII.

GO'TAMA:—Or the first born shall first choose and take any one chattel and ten head of cattle; and the rest shall successively make a similar selection.

Any one chattel which may please him. For instance; the eldest first takes any one chattel at his choice, and ten head of cattle; cut of the residue, the second son chooses one chattel and ten beasts, the third son / . . . / takes one article and ten head of cattle; and so forth. Here the first choice, allowed to the first born, is a mark of veneration. But CHANDRA-varma remarks, that 'the cattle must be of the same kind.' Yet, if that cannot be, the selection must be made in any practicable mode. The same leg flavor except certain animals.

## LXIX.

GO'TAMA:—But if a man take ten head of beasts, which have no cloven hoof, nor of slaves.

"BEASTS, which have uncloven hoofs;" horses and the rest. "Bipeds," slaves and the like. That he shall not take ten of these, is inferred from what preceded. It appears from a text of MENU, that sons do not each take ten goats and sheep.

## LXX.

MENU:—LET them never divide the value of a single goat or sheep; or a single beast with uncloven hoofs: a single goat or sheep remaining after an equal distribution belongs to the first born.

SHALL they, or shall they not, be taken by the eldest? To this question the answer is, if the eldest be entitled to the deduction of a tenth or twentieth part, under other texts, in that case only is equal partition prevented; the goats and sheep may be taken by the eldest: but in this case, which concerns the equal deduction of a fixed number, since the rest of the brethren are forbidden to take ten sheep and goats, the eldest also has no such right. But CULLU CABHATTA considers this text as relating to partition: For example, five brothers inherit four goats: in that case one goat cannot be allotted to each of them, because the number is less. The pecuniary value, or other property taken as the equivalent, ought therefore to be distributed: but MENU forbids that. What then shall be done? MENU replies, "they belong to the eldest alone; that is, they shall be given to the eldest alone."

MUCH various discussion occurs on this point. The text falls within the consideration of the portion allotted to the eldest son, and cannot relate to subsequent distribution. Again, that the sheep and goats should be given to the eldest, has been already mentioned: but what is the rule in respect of beasts, which have uncloven hoofs? If the words "sheep and goats" are merely illustrative, that term (beast, which has uncloven hoofs) is nugatory. Since the text may coincide with that of GOTAMA, and forbid the taking of certain cattle as the portion of an eldest son, it is a reprehension of this exposition, that it abandons that coincidence, to establish an independent rule.

## LXXI

NAREDA — To the eldest a greater share shall be given ; a worse share is ordained for the youngest ; the rest shall have equal allotments, and an unmarried sister shall also have a portion.

2. THE same *distribution is ordained* among sons legally begotten on the wife of a kinsman.

SOME lawyers consider this text as relating to the partition of a small property among brothers, most of whom are equally endowed with good qualities, but the youngest somewhat inferior to the rest in virtue since a deduction, such as one chattel, cannot be given, greater veneration shall be evinced by giving the best share to the eldest, and since the youngest is inferior by reason of his deficiency in virtue, the worst share shall be given to him. But CHANDESWARA thus conceives the text, ‘ in additional share, or one besides that to which he will be entitled in the general distribution, shall be given to the eldest in right of primogeniture, less than that, three quarters, half, or a quarter of it, shall be given to the youngest, if he be virtuous, in proportion to the degree of virtue ’ The rest, namely the intermediate sons, shall have equal shares. They have a right to an equal allotment, that is, they have the succession or ownership of a single share without an additional portion on account of virtue. An unmarried sister shall have a portion, not an equal share, for equal participation of sisters will be forbidden. Or the sense may be, she shall have an equal or exact share, that is, her due allotment without an additional portion, as the phrase “ there shall be an equal division of that property ” (LXXXIII) signifies, *but no double allotment shall be given* her due share will be subsequently mentioned as amounting to a fourth part of a brother’s share.

The author of the *Pratasa* reads “ *bṛhma Līz clāzrī*, and a better portion to the most excellent brother, instead of *Cmshvajātara*, a worse portion to the youngest. He thus expounds that reading, ‘ a double share shall be given to the first born ; and the most excellent brother, employed in managing the affairs of the family, shall have a better portion ; he shall have

EXTENDING to sons begotten on a wife by a kinsman what has been ordained in respect of sons begotten in lawful wedlock, the lawgiver adds, "the same distribution &c" (LXXI 2) in respect of the sons of the wife legally begotten, the rule is the same with that respecting the son begotten in lawful wedlock. Consequently whatever rules, relative to the portion of an eldest son and the rest, have been propounded in respect of the son of the body, the same rules should, if possible, be also admitted in the case of sons of the wife. "Legally begotten," if an eunuch, or other impotent person, give his own wife to another man of the same family, or at least of the same class, for the sake of obtaining offspring, and issue be procreated by him approaching her sprinkled with clarified butter and so forth, agreeably to the form of fulfilling the appointment, then only is the son of the wife legally begotten. How then can one adoptive father have two or more sons begotten on his wife by a kinsman? CHANDE SWARA replies, 'this supposes the birth of twins.' The meaning therefore is, that two or more sons have been produced *at one birth*, although the procreation of one alone were designed.

THIS concerns one eldest by birth, science and virtue, (XLV) "Birth," prior birth "Science," such science as is not blamable in his class. Endowed with these and with virtue, he is *venerable* like their father. This reason is assigned for his double portion. The rest, namely the younger brothers, being deficient in virtue, and unlearned, *shall share alike*. The text of GOTAMA (LI) concerns the same case.

## LXXII:

USANAS.—THIS partition is ordained among sons born in the direct order of the classes; but partition among brothers of the same class is regulated by equal shares.

THE first hemistich alludes to partition among sons produced by wives of various tribes. "In the direct order of the classes, sons inferior in class to their father. But partition among sons of one and the same tribe is regulated by equal shares. Thus some lawyers expound the text.

AND this equal participation supposes all the sons to be equal to .

other, because they are deficient in virtue, or it regards sons, who have acquired wealth by various modes of labour, though one of them may surpass the rest in good qualities.

The *Retnacara.*

IN the first case, equal partition shall be made after giving an excellent chattel, as the deducted allotment in right of primogeniture, or it supposes the eldest brother to be guilty of some offence, such as defrauding his younger brothers, or the like. The last case is strictly accurate.

### LXXXIII.

**MENU:** — AND if all of them, being unlearned, acquire property before partition by their own labour, there shall be an equal division of that property without regard to the first born; for it was not the wealth of their father: this rule is clearly settled.

"UNLEARNED" is merely an instance: the rule is the same, if they be learned. CULLUCA BHATTA observes, 'when property is acquired in agriculture, commerce or the like, by the exertion of all the brothers, being unlearned; then, since that was not acquired by their father, but by themselves, an equal division shall be made, and no deducted allotment shall be given. This relates to property acquired without the co-operation of their father, a former text (LXXIX) relates to property acquired with his co-operation: there is no vain repetition.'

### LXXXIV.

**YAJNYAWALCIA:** — SHOULD joint-property be improved by the exertion of one partner, equal partition is nevertheless ordained.

This is an exception to the text of VASISHTHA.

### LXXXV.

**VASISHTHA:** — AMONG these partners, he, by whom property

perty is acquired through his own sole labour, shall take a double share of it.\*

If the common property be improved by agriculture, or commerce, or the like, through the exertion of any one parcener, equal partition is nevertheless ordained, a double share shall not be assigned to him, by whom it has been improved. But the text of VASISHT'HA must be considered as applicable to a different case.

' The *Retnacara*

WHEN the common property is improved by agriculture, commerce, or the like, equal partition is made more is not given to one parcener, in proportion to the greater acquisition obtained through his labour; for it coincides with the text of MENU (LXXIII).

The *Dipacalica*

In fact, "equal" signifies without the deducted allotment given in right of seniority, such shall be the partition, in the case of property acquired by the joint exertion of brothers. Again, it is inferred from the tenour of this text, that the portion of an elder brother, though not expressly ordained by YAJNYAWALCYA, is allowed even in the case of partition among brothers (*else, it would be superfluous to forbid it in this particular instance*) Accordingly VACHESPATI MISRA observes, "if any one parcener, by agriculture, commerce, or the like, improve the common property, still he shall not have a greater portion of it but this is only true, when the rest have likewise done so by the use of common property, else it would contradict the text of VASISHT'HA

### LXXXVI

MENU.—SHOULD a younger brother in the manner before mentioned have begotten a son on the wife of his deceased elder brother, the division must then be made equally between that son, who represents the deceased, and his natural father thus is the law settled.

\* Cited again at v. CXXXVIII, and at v. CCCLVI

in this case. The legislator subjoins the cause (LXXVI 2): for the substitution, or procreation of a representative, has been legally effected by such younger brother thereby become principal. How can the younger brother become the principal? Therefore does the sage add, in the production of offspring, the youngest brother was the father or procreator. Consequently, because the younger brother perpetuates the race, therefore he is principal, and for that cause, he is entitled to an equal share: no deducted allotment shall be taken.

' THESE texts,' say some authors, ' ordaining the portion of an eldest son, should be applied to partition by a father, to partition among uterine brothers, and to that among brothers born of different mothers, according to circumstances: else, the questions, which arise on such cases, are not satisfied. Texts, which contain a term descriptive of the person who makes the distribution, merely elucidate the mode of it. However, the texts of such sages, as have propounded special limitations, must be considered as special rules, or exceptions.' That opinion is unauthorized by ancient authors; for VACHESPATI, BHATTACHARYA declares three texts applicable to partition by a father, and two texts of MENU, with one of BAUDHAYANA exclusively applicable to the case of partition among brothers of the half blood, and CHANDESWARA, premising partition during the life of the father, cites four texts under that head, and cites nearly all the rest in cases of partition among uterine brothers and sons of different mothers but VACHESPATI MISRA and the rest have said nothing expressly on this point

IT should be here noticed, that at this time, in our country, the practice of deducting a twentieth part or the like is almost wholly disused; but some chattel of small value is given to the eldest as a token of veneration

2. THE representative is not so far wholly substituted by law in the place of the deceased principal, as to have the portion of an elder son; and the principal became a father in consequence of the procreation by his younger brother; the son, therefore, is entitled by law to an equal share, but not to a double portion.

If a younger brother, in consequence of a legal appointment, beget a son on the wife of his elder brother, then an equal partition shall be made between that son of the wife and his adoptive uncle or natural father; he shall not, like his adoptive father, take the deduction of a twentieth. Such is the settled rule of partition: but a son, so begotten without a legal appointment, is excluded from inheritance, as will be mentioned. Although it be said, "his uterine brothers and sisters shall assemble and divide equally the share of the deceased" (MENU, Chap. 9, v. 212), still, as the grandson, whose father has deceased, succeeds to his share in the paternal grandfather's estate, it should appear from this reason, that the son, begotten on the wife of the eldest brother, would be entitled to a deducted allotment besides the equitable share; because he is considered as the son of the eldest brother: removing this doubt, the lawgiver (LXXVI 2) confirms what had been already mentioned. "The representative," the substitute, or son begotten on the wife, has no connexion with the title of the principal, the husband of that wife, his adoptive father, whereby he would have taken a deducted allotment besides his equitable share. The principal, though husband of that wife, became a father in consequence of the procreation by his brother on his wife: therefore the younger brother is entitled by the preceding law, concerning the rule of partition, to an equal division with the son begotten on the wife. The last verse must be thus supplied from the preceding.

CULLU CADHATTA.

But some lawyers thus expound the text; if the younger brother legally procreate a son on the wife of his eldest brother, then the division must be made equally, whether the partition be undertaken between those brothers, or between the uncle and nephew: no deduction of a twentieth is allowed

in this case. The legislator subjoins the cause (LXXVI 2) : for the substitution, or procreation of a representative, has been legally effected by such younger brother thereby become principal. How can the younger brother become the principal? Therefore does the sage add; in the production of offspring, the youngest brother was the father or procreator. Consequently, because the younger brother perpetuates the race; therefore he is principal; and for that cause, he is entitled to an equal share; no deducted allotment shall be taken.

' THESE texts,' say some authors, ' ordaining the portion of an eldest son, should be applied to partition by a father, to partition among uterine brothers, and to that among brothers born of different mothers, according to circumstances: else, the questions, which arise on such cases, are not satisfied. Texts, which contain a term descriptive of the person who makes the distribution, merely elucidate the mode of it. However, the texts of such sages, as have propounded special limitations, must be considered as special rules, or exceptions.' That opinion is unauthorized by ancient authors; for VACHESPATI BHATTACHARYA declares three texts applicable to partition by a father, and two texts of MENU, with one of BAUDHAYANA exclusively applicable to the case of partition among brothers of the half blood; and CHANDESWARA, premising partition during the life of the father, cites four texts under that head, and cites nearly all the rest in cases of partition among uterine brothers and sons of different mothers: but VACHESPATI MISRA and the rest have said nothing expressly on this point.

IT should be here noticed, that at this time, in our country, the practice of deducting a twentieth part or the like is almost wholly disused; but some chattel of small value is given to the eldest as a token of veneration.

## CHAPTER II.

## ON THE DISTRIBUTION MADE BY A FATHER IN HIS LIFETIME.

AFTER incidentally discussing, in this place, the portion of an eldest son, we proceed to explain the proposed subject of partition made by a father. He may distribute at his pleasure immoveable and other property acquired by himself. In the first place, he may reserve for himself as much as he pleases. Next, having given to his first born a suitable portion, according to law, as a token of greater veneration due to him, let him make an equal partition among all his sons. But, if one surpasses the rest in piety or the like, a greater share should be allotted to him; or if his conduct be irreverent, a less share: if a *heinous* offence be imputable to one son, such as enmity to his father or the like, no share shall be given to him, for it is recorded in the texts of YAJNYAWALCYA, VISHNU and HARITA (XXVI, XXV, and XXIII), that partition, *made* by a father, is solely regulated by his pleasure, and that he may reserve a considerable residue, of which the quantity is not limited: The double share, assigned to the father, must be understood as restricted to the patrimony left by the grandfather: yet he may distribute the precious stones, pearls and the like left by the grand sire, in the same mode with property acquired by himself; agreeably to the text (Book II, Chap. IV, v. XIII), " of precious metals or stones, of pearls, " coral and other moveables, the father has power to give or sell the " whole." Such is the opinion of JIMUTAVAHANA and others. The texts of BAUDHAYANA (XL) and others suggest equal partition among sons, and a greater share for the eldest. In applying the text of GATYAYANA (XXVII), those of BAUDHAYANA and the rest must be

( 60 )

ed in the cases stated by RACHUNANDANA and others, when filial piety, a large family to maintain, inability to earn a livelihood, or other allowable circumstance justifies unequal distribution; or when disrespect or hatred towards the father, or other *bad quality*, justifies total exclusion. It should not be argued, that the phrase, "without a sufficient cause," intends those virtues, which constitute the seniority of sons. A father has power to give greater shares to sons who are eminent for piety or the like, though not endowed with such virtues; for NA'REDA (XXVIII) declares a father to be destitute of such power then only, when he is governed by lust, wrath or the like. But, if a malicious father do not call dutiful a son however pious, but born of an unloved wife, and *on the contrary* call him an enemy to his father, what shall be the rule of decision? Since the father has full power over property acquired by himself; and since the greater allotment, in right of duty and piety or the like, depends solely on the option of the father; if he do not give it, who shall compel him? But, if he exclude his son from a share, calling him inimical to his father, he must prove that enmity in the presence of the king or before a publick assembly, and then refuse a share; exclusion from inheritance, on his own simple assertion, is not valid. But if he wish to allot a greater share to the son of a favourite wife, though not dutiful, calling him pious on account of his mother, he can only give that greater allotment, after proving the fact asserted.

A FATHER has dominion over property, acquired by himself: should he give no share to any one son *though* guilty of no offence, and give a share to one guilty of offences, who shall punish him? - It cannot be affirmed, that, under the authority of the texts cited from CATYAYANA and BAUDHAYANA, the king may punish such a father. The law propounds the moral offence committed by a father slighting such precepts, but ordains no fine; like the giver of gold to an improper object, thereby committing an offence, but incurring no civil penalty. When this seeming difficulty is proposed, some lawyers reply; since the son has a title in the father's estate at the very moment of his birth, without any other cause, (for the particle is exclusive in the text of GOTAMA, "even by birth alone a man may gain ownership;") a father, making an unequal partition without attending to the rules prescribed in codes of law, and giving away the joint property

to any one person, shall be arrested by the king. It should not be argued from the text of DEVALA above cited (V), that they have no ownership while the father-lives. There is no difficulty, if the want of ownership consist in the want of right to alienate such property at pleasure and it is seen, that a son is incapable of alienating wealth at pleasure, while his father lives, even though he possess several property. as in the text quoted in a former book (Book II, Ch IV, v LVI, and Book III, Ch I, v LII 1) the phrase, "they have no wealth exclusively their own," must be explained as signifying only, that they are incapable of alienating it at pleasure they are not destitute of ownership in such wealth, for, were it so, it would incidentally prevent religious ceremonies defrayed out of their wealth. Let it not be alleged, that, since the words "what they may gain" occur in the precept, \*and since it is necessary to establish ownership, because religious rites could not otherwise be defrayed, therefore it is right to explain the text as signifying want of dependence, but in this case, since religious rites may be accomplished with mone, furnished by the father, there is no failure in the performance of ceremonies why then take want of ownership as signifying want of independence? the observation of JIMUTAVAHANA is therefore justified. Since some title must be established, because the texts of law, which forbid unequal partition would otherwise be irrelevant, therefore, in this place also, the term "want of ownership" must, from parity of reasoning, signify want of independence. Nor should it be affirmed, that the law merely shows a spiritual offence in making unequal partition, as in neglecting a priest who attends in consequence of an invitation to assist at a Brudha the priest, who attends, has no property in the food provided for that celebration, tho' it be immoral to withhold it. The text of NAREDA (XXVIII) shows, that, if an unequal division be made by a father, it is invalid. If unequal partition be erroneously made by the owner, and his own property be immediately devested by his son, and property vested in all the sons, or in him who receives the greater portion, what useful consequence could follow from the consideration, that the father had no power to make such a distribution,

\* These words do not occur in the text cited. I so note as will refer to the text of NAREDA (Book III, Ch I, v LI) which differs from that of Mitra (v LII, i.e. the same chapter) in substituting the word cow quoted against them acquire ergo, for something like horses, they are. Of course it is an error & partly accidental, in citing a text of Mitra to refer to a similar text of NAREDA.

which, nevertheless, would remain in force? Therefore is the title of sons to their father's wealth, even during his life, admitted; but not the power of aliening it at pleasure. Accordingly the text *cited in a former book* (Book II, Ch. IV, v. XIV) is pertinent in its literal sense. Conceiving, that the consent of the son is presumed in the case of precious stones, pearls, or other things, which have no long duration; being given away by the father, this is propounded in respect of immoveable property: and the practice is such. Nor should it be argued, that a son cannot have property in the estate, while the father lives, since it has been established; that one property resists another concurrent title, lest property by occupancy should arise in respect of a chattel not abandoned by its owner. It is admitted, that thieves and the like have property by occupancy, even in a chattel which was not abandoned by the owner. Or supposing it true, the difficulty is removed by affirming, that one property only resists an incompatible property. The title of three descendants, during the owner's life, is mentioned by BAUDHAYANA (III), not as producing property immediately vested in the son or other heir, but as producing a right, which entitles him to alienate it at pleasure, but which takes effect only after the father's property has expired. Thus they resolve the seeming difficulty;

But, that is wrong; since there is no authority for establishing such property within property; and the law of equal partition (XL) bears a different import. For example; equal partition may be considered as preceptive like the maintenance of the family out of a man's own wealth. Thus the support of a married daughter residing in her father's house (for so the term is explained by VIJAYA'NL'SWARA) is approved by YA'JNYAWALCYA (LXXVII), although she have no title to the estate; and there is no difference, so far as proof of property is concerned, between the enjoyment of a minister and the receipt of a share. VACHULSPATI BHATTA'CHARYA and others also do not admit the son's vested title in the paternal estate, during his father's life.

#### LXXVII.

YA'JNYAWALCYA:—After affixing a sufficient support to infants, to a married daughter residing in the house of her father,

father, to aged persons, pregnant women, persons afflicted with disease, damsels yet unmarried, guests and servants, the husband and wife may enjoy the residue.

*On this subject it is said*, the verb "divide" (*bhāj*), in the present title denotes ownership depending on affinity. There is so much difference, as it relates to the thing or the person. Consequently, in answer to the question, "what shall be equal?" which arises on the terms of the text, "equal to all," adducing the verb, "divide" or make a partition (*vibhāj*), which is found in a text of scripture:—("vibhājyāt) let him distribute, &c." partition (*vibhāga*), must be affirmed to be the subject of that epithet; for the phrase, "when the father makes a partition among his sons," suggests property vested in the sons in right of affinity. Again; in the case of partition by a father, his property being divested by his chusing to make a distribution, and a similar title being vested in all his sons, the right of receiving a greater allotment accrues to the eldest, and to those, who are eminent for duty and piety or the like, by consent of the rest, in conformity with the law. But, if the father make a gift to one son, in the form of a relinquishment producing the effect of investing another with property, it is valid like a gift to a stranger, whether the donation consist of immoveable property or the like acquired by himself, or of wealth inherited from the grandfather. However, a father, giving away an immoveable estate, which has descended from the grandfather, without the consent of his sons, incurs the guilt of a moral offence. Under the text of YAJNYAWALCYA (X-XIII), should larger portions be assigned by the father's choice to sons eminent for piety or the like, *still* their property originates solely in their affinity. Consequently, in the case of partition by a father, both the volition of one, who is undisturbed by disease or passion, and the affinity of the son, contribute to vest property. As for what is said, that since a title in the estate of the father and grandfather is vested by birth alone, therefore the father is independent in the use of all property, except immovables, whether he use it for gifts made through favour, for the support of the family, for relief from distress, or for other purposes, either necessary or preceptive, but he is controlled by his sons and the rest in respect of immoveable property, whether acquired by himself, or inherited from his own father or other ancestor.

(Book II, Chapter IV, v. XIV); that is wrong: for it would contradict the text of *DE'VALA*, "they have not ownership or full dominion, while a faultless father lives" (V).

BUT, if a paternal grandfather make a partition among his grandsons, whose own fathers are deceased, and in that case give more than his equitable share to any one grandson, because he is unable to earn a livelihood or the like, what shall ensue? From parity of reasoning, such unequal distribution is valid. In like manner, should any one grandson betray hatred of his father or paternal grandfather, he, but not his brother, shall be excluded from a share. This shall be discussed at large.

THE rule of *VISHNU* expressing, "if a father make a partition with his sons" (XXV), and the scripture intimating partition of heritage in favour of sons, partition among sons alone is found to be mentioned: how then can a distribution be made among grandsons, by a paternal grandfather?

### LXXVIII.

*YAJNYAWALCYA*:—BUT to grandsons by different fathers shall be allotted the portions of their respective fathers;

To grandsons, of whom the fathers are different, shall be allotted portions in right of their several fathers: all the grandsons succeed to the proper shares of their respective fathers. Consequently so many shares should be formed as there were sons of the original proprietor, and should be given to their respective sons, and let them take those shares, whether they be uterine brothers or born of different mothers, and whether they live together, or subdivide the shares according to the number of their own brothers respectively: such is the meaning of the text. This rule of adjustment is grounded on positive texts.

The *Mitacūrā*.

SHOULD not this text be affirmed to relate to partition after the death of, the father, since *YAJNYAWALCYA*, having propounded partition among the heirs after discussing that which is made by the father, subjoins this text?

No; for immediately after this text, he propounds a rule respecting partition made by a father (XCI): accordingly the text of ME<sup>uv</sup> (XXIX) has a similar import. This text, therefore, being applicable to both, must be considered as relating to both *subjects* but the text, which will be cited (LXXXIII), concerns only partition made by a father, *since* it is placed immediately after that topic.

## LXXIX.

**CĀTYA'YANA** :—SHOULD a son die before partition, his share shall be allotted to his son, provided he had received no fortune from his grandfather:

2. That son's son shall receive his father's share from his uncle, or from his uncle's son; and the same proportionate share shall be allotted to all the brothers, according to law:
  
3. Or, if that grandson be also dead, let his son take the share; beyond him, succession stops.

MISRA reads *avibbaclē nijē pritē* instead of *avibbaclē mritē putrē*, and expounds the text by supplying the word "brother" (should a brother, *being himself entitled to a share*, die before partition &c.) "His son" signifies the son of that brother. "Fortune;" a portion. "What share shall the brother's son receive? The legislator replies to that question; "his father's share." "His son," in the subsequent verse (LXXIX-3), signifies the great grandson of him, whose estate is distributed. Hence the estate of the householder shall be divided according to the number of sons. The share, therefore, which is allotted to a son, shall be received by his son or grandson, not by his great grandson; for beyond the son's grandson succession stops. This relates to partners living together.

IT is proper in this instance to explain the word "himself" (*ryas*) the person, who receives a share of the estate, whether son or brother. else the text could not relate to the case of partition made by a father. It is not

his meaning, that the text relates not to partition by a father; nor does the text contain the word " brother."

" BEFORE partition," or literally " undivided," denotes one, with whom partition has not been made. May not strangers be proposed as undivided persons? No; for the term is used with reference to the right of partition; as the word *d'bénu* (sucked) signifies a *milch* cow, and *pancaj* (produced in mud) signifies a lotos: and the right of partition consists in the relation of the son to the original possessor and the like. Even the son of the daughter of a man, who leaves no male issue, and the son of a mother's sister, are not intended by the term "undivided," since they belong to other families. Or, in other instances, the term, coparcenary of undivided persons, signifies the joint ownership of the same thing; but here it bears a literal sense, and strangers are excluded by the subject, namely "son;" a son may be truly said to be unseparated from his father.

" PROVIDED he had received no fortune" (LXXIX 1); otherwise, if the original proprietor, having made a partition among his sons or grandsons, live reunited with some of his sons, partaking of the same food with them, and if partition be again proposed after a great lapse of time, a share would be due to his grandson, even in this partition, as in the former distribution. If the reading, cited in the *Retnácarā*, be followed (*avibhātē virūpē putrē*), the legislator, having so far propounded partition by a father, proceeds to the subject of partition among brothers; ' he shall receive his father's share; or, should he be dead, his son shall take that share:' the text must be so supplied. But CHANDEŚWARA says; ' if any one of the brothers be living, the son of that brother shall have no share.'

#### LXXX.

DE'VALA:—As the suspended water-pot matures the *pippala* tree, so a father, a grandfather, and a great grandfather cherish a son from the moment of his birth,

2. With honey, fleshmeat, potherbs, milk and milky food, reflecting "he will give us the annual *śrāddha*, and that which is offered under the lunar asterism *Maghā*."

FROM

FROM this text of DÉVALA, JI'MU'TAVA'HANA argues in the section on partition among brothers, that 'sons and the rest of three persons have an equal title to the succession, because they equally confer benefits on the person, from whom they inherit : their title is not successive in the order of proximity, the title of the grandson on failure of a son, and the title of the great grandson, on failure of a son's son. If that be the case, have a grandson and a great grandson, although their own fathers be living, a title to the succession? No; for they do not confer immediate benefits, since they are not entitled to offer the double set of oblations. If one son have left three children, and the other son be living, then, on the supposition of equal benefits conferred, would not the estate be divided into four *equal* shares? No; since the right of sons is grounded on their birth and relation to their father, their sons can only have a claim to so much as they were themselves entitled to ; the three *grandsons* have a right to one half of the estate, and their uncle to the other half.' To this it may be objected, that, if there be two sons, and one has a grandson whose own father is deceased, why should not that grandson, succeeding to his deceased father, have a title to a share of the *common* estate, although his own paternal grandfather be living. Again ; the male issue of a son, who is become a recluse, would have no title to succession. It should not be affirmed, that a great grandson, whose own father is deceased, deriving his title through his own grandfather, can only have a right to the property which accrues to that ancestor, and is debarred by its being vested in his grandfather. There would be no ground of choice (on JI'MU'TAVA'HANA's supposition) whether property should vest in the son or in the great grandson. In the silence of the law, it would not be possible to establish the superior right of the son.

## LXXXI.

DÉVALA :—PARTITION of heritage among undivided partners, and a second partition among divided relatives living together *after reunion*, shall extend to the fourth in descent ; this is a settled rule.

THIS text may also relate to partition by a father, in this manner ; among undivided

undivided parceners, between whom no partition has taken place, and among divided relatives, who have received a distribution, but who are reunited and live together, partition, and *in the last case*, a second partition, may be made with the original owner or his issue, as the case may be, as far as the fourth in descent or great grandson of the original owner. "Second" does not relate to partition among undivided parceners; for it is a rule, that an epithet, which is liable to objection, is superfluous.

## LXXXII.

**DE VALA:**—So far, namely as far as the fourth in descent, relatives are *sapindas*, or connected by funeral oblations; beyond him, the funeral cake is rescinded; sages declare partition of inheritable property to be co-ordinate with the gift of funeral cakes.

"So far," as far as the fourth in descent, relatives, or persons sprung from the same family, are *sapindas*; for example, one gives the funeral cake, the other three receive the oblation; hence there is a mutual connexion, by the gift and receipt of funeral cakes, between four persons. And this connexion of *sapindas* regards inheritance, but the connexion of *sapindas*, in respect of impurity by reason of the dead, extends to the seventh in descent, including the ancestors who partake of the rice wiped off the hand with which the funeral balls were offered.\* This shall be discussed in its place; of what use would be a mispliced disquisition? Beyond him, (beyond the fourth in descent) the funeral cake is rescinded; for there is not, between more distant relatives, the mutual connexion of giving and receiving the funeral balls. We thus expound the text.

"SAGES declare" &c; they declare the succession of inheritable property to be co-ordinate with the gift of funeral cakes. Consequently he, who offers the double set of oblations and the funeral cake, succeeds to the heritage. But CHANDEWARA says, "this text is applicable, when partition not having been made, property, not enjoyed by one coheir, is solely enjoyed by another residing in the same province." It should be here remarked, that if

a son die after partition, but some property remained in coparcenary, a share of that undivided property must be given to the son of the deceased, when a partition of it is made.

## LXXXIII.

YĀJNYAWALCYA — WHEN the father makes an equal partition among his sons, his wives must have equal shares with them, if they have received no wealth either from their lord or from his father.

If he make an equal partition among his sons by his own choice, he must give equal shares to such of his wives also, as have no male issue

The *Dipacalica.*

HELA'YUDHA says, 'wives, who have no sons, are here intended.' And JIMUTAVAHANA also concurs in that opinion

## LXXXIV.

VYASA.—BUT the wives of the father, who have no sons, are declared entitled to equal shares with the sons of other wives and so are all the wives of the paternal grandfather; they are pronounced equal to mothers.

" Or the father," the sixth case with the active sense, ' a partition being made ' must be supplied. Consequently, a partition being made by a father, his wives, who have no sons, are declared entitled to equal shares. Such is his (JIMUTAVAHANA's) opinion, and RAGHUNANDANA and others concur in the same interpretation. It should not be argued, that the construction of the text is, " the wives of the father," and consequently, when partition is made by sons after his death, the wives of their father, who have no male issue, namely their stepmothers, shall have equal shares, and the text therefore relates to partition mad- by sons When partition is made by sons, the law does not allot a share to the stepmother, who has no male issue Nor should it be argued, that this text of VYASA is alone an ordinance of sufficient authority There is no difficulty in referring

it to partition by a father. Nor should it be argued, that the text of VRIHASPATI (LXXXV) is an ordinance of that import, both dam and mother (*janani* and *mātri*, genitrix et mater) being inserted to evince, that both mother and stepmother are meant.

## LXXXV.

**VRIHASPATI:**—ON the death of the father, the mother (*janani*) has a claim to an equal share with her own sons; his mothers (*mātarah*) take the same share; and the *unmarried* daughters each a fourth of a share.

SINCE the word "mothers," requiring elucidation (mothers of whom?), might first suggest "son" for the answer, because he is the *most obvious* agent in the sentence (as in the phrase, "he, *the son*, behaves with piety towards *his mother*"); yet, as the same sense has already been obtained from the former part of the sentence, "on the death of the father, the mother has a claim &c," father, being the subject of the text, occurs for the answer to the question, "mothers of whom?" Consequently, the wives of the paternal grandfather are entitled to equal shares with his grandsons; for this corresponds with the text of VYASA (LXXXIV). Thus, according to JIMUTAVAHANA, RAGHUNANDANA, SRI KRISHNA TERCALANCA RA and the rest, when partition is made by a father, a share, equal to that of a son, must be given to the wife, who has no son, not to her who has male issue; her son should be considered as alone entitled to share in the partition: this, they think, agrees with common sense. But, when partition is made by sons, no share need be allotted to the stepmother, who has no male issue; but food and raiment must be assigned; for the late owner of the property was bound to support her. HELEXUDHA and the author of the *Dipacalicā* concur in opinion, that, when partition is made by a father, no share shall be allotted to the wife, who has a son; but, the author of the *Dipacalicā* does not hold, that no share shall be allotted to the stepmother who has no male issue, when partition is made by sons. CHANDESWARA says, "when partition is made by sons, a share must be allotted to the stepmother, who has no male issue: the particle "but" (LXXXIV) has the sense of also; consequently the wives, who have, and those who have not, sons, are entitled to shares." MISRA delivers

delivers a similar opinion; and SULAPĀ'NI also remarks, "the wives of the father must receive equal shares, from the sons of course."

SINCE it might coincide with the text of YĀJNYAWALCYA, "the mother of sons making a partition after the death of their father shall also take an equal share," it might be questioned, whether the term "wives of the father" (LXXXIV) mean the mother of the sons, expressed in the plural number by way of allusion to marriages contrasted in various classes. It could not be said, that "mother" in the text of YĀJNYAWALCYA signifies both natural mother and stepmother. A word cannot be admitted in a primary and secondary sense at the same time; for it is a rule in philology, that a word, uttered but once, conveys but one meaning. Is it not for the purpose of obviating this doubt, that the legislator adds, "who have no sons" (LXXXIV)? And the construction preferred by JIMUTAVAHANA and the rest, which recites, "partition being made by a father," should be alone admitted. If this be alleged, it is denied; for it is a rule, not to deduce from other texts the explanation of a clear precept; and it would be therefore wrong to remove the term, "who have no sons," from its natural and near connexion in the sentence, to construe it with the word "wives," *at the same time* separating this from the words, "of the father." Again; the last half of the text of VYĀSA must be considered as relating to partition among brothers after the death of the father, since it contains the term, "wives of the grandfather." Consequently, the first hemistich relating to partition by a father, and the last hemistich to partition made by sons after the death of the father, the text would be carried out of the due path. Mother, in the phrase "equal to mothers," requiring the son for the person, who makes the distribution and who gives a share to the wife of the grandfather, and his mother's share not being specified in the text, there would be the additional trouble of seeking the following text of another sage, "the mother shall take an equal share with her sons, after the death of her lord." Nor is there any thing inconsistent with the text of YĀJNYAWALCYA; for in many instances the word "mother" is employed in the sense of stepmother. Nor is this construction liable to the

\* See a note at page 101.

+ An instance is given, but I do not recall the remainder of the text, without which the quotation cannot be confidently translated. T.

objection.

objection of a word being used in two senses at the same time; for the word is accepted in one sense only, "wife of the father"; a secondary sense without abandoning the natural meaning; as in the example, "preserve the curds from the crows," that is, from any animal which might destroy them.

SULAPANI, in the *Dipacaliciā*, commenting on the text of YĀJNYAWALĀCYA, cites the text of VYĀSA as bearing the same import. Accordingly, in the text of VRĪHASPATI, "natural mother" (*janani*) is used in the singular number, because she, who bore the son, is individual; and since stepmothers may be numerous, the word "mother" (*mātri*), denoting the stepmother, is used in the plural number (*mātarab*); and there "mother" (*mātri*) signifies stepmother only, bearing a figurative sense wherein the natural meaning is abandoned; and the preceding phrase is added to remove the doubt whether the natural mother be alone entitled to a share, since "mother" (*mātri*) might signify natural mother only; in the same manner as the term, "those, who have no sons," is added in the text of VYĀSA.

CHANDESWARA, commenting on the text of VRĪHASPATI, says, "natural mother" (*janani*) here signifies her, who has a son; and "mothers" (*mātarab*), wives of the father. VĀCHESPATI MĪKĀ expounds "on failure of him," "on the death of the father (LXXXV); "natural mother" (*janani*), she who has a son; "mothers" (*mātarab*), stepmothers who have no male issue; all these shall have equal shares with the sons; and unmarried sisters shall have each a quarter of their brother's share, to defray the expenses of their nuptials. The claim to an equal share with the sons must be considered as a derivative title, arising out of another absolute title, in this mode; whatever would have been their shares had they sons, the same shares shall they receive, if they have no male issue. Consequently, if a priest have a barren wife of the military class, three shares must be severally allotted to the sons of the Brāhmaṇī wife; but two shares to the Cshatriyā wife and so forth. VISHNU, omitting the word, "equal," and using the word, "proportionate," makes this evident.

## LXXXVI.

VISHNU:—MOTHERS take shares proportionate to the shares of sons, and so do unmarried daughters.

ON this JI'MU'TAVA'HANA has remarked, that *mothers take shares* in proportion to the shares of sons : as the shares allotted to sons are four, three, two, and one, in the direct order of the classes, so are the same shares also allotted to wives of the same class. Else it would have been said, whatever shares are allotted to the sons, the same shall be also allotted to the wives. By the expression, 'the shares allotted are four, three, two, and one, in the direct orders of the classes,' it is intimated, that, as the *Cshatriya* son of a *Brahmana* shall take three shares, so shall the *Cshatriya's* wife. However, this text is propounded, as applicable to the case of partition by a father. The distribution of four, three, two, and one, shares, will be subsequently discussed.

'AND unmarried daughters take shares proportionate to those of sons ?' such is the construction of the text. Consequently, since it has the same import with the text of VRISHBAPATI, they each receive the quarter of a share. By saying 'in proportion to the shares of the sons,' it is expressed, that a virgin shall receive a fourth of such share as would be allotted to a son of the same class with that from which she sprang.

AGAIN, the annexing of the epithet, 'childless, or who have no sons,' is considered as groundless by the author of the *Dipacalica*, by HELEVUDHA and others; but that is not affirmed by VIJNYANE'SWARA, CHANDE'SWARA, VACHESPATI MISRA and the rest. It is, consequently, their opinion, that when partition is made by a father, even the wife, who has sons, may claim a share. But some think the opinion, delivered by the author of the *Dipacalica*, consistent with the reason of the law; since the particle "but" in the text of VYASA is exclusive; therefore, as no share should be given to her, who has male issue, when partition is made by sons, so, from parity of reasoning, none should be given, when partition is made by the father. It should not be argued, that, according to the opinion of CHANDE'SWARA and the rest, the words "after the death of her lord," in the text quoted by JI'MU'TAVA'HANA, and "if the father be dead," in the text of CATYAYANA\*

\* Excepting the texts to be cited at large in other places, I had here omitted these imperfect quotations; but I now subjoin them in this note.

Text quoted by JI'MU'TAVA'HANA: The mother shall take an equal share with her sons, after the death of her lord.

CATYAYANA: And the mother shall have an equal share with her sons, if the father be dead. T.

are unmeaning, since it is directed, that a wife, whether she have, or have not, male issue, shall take an equal share with the sons, whether their father be living or deceased. If the father be living, greater or less shares are received, through his choice, in proportion to duty or piety and the like, but, after his death, equal shares alone are received, without attending to the duty and piety of sons, or the like: and, in the case of partition by a father, wives are entitled to equal shares compared with each other; but, in the case of partition made by sons, they are entitled to equal shares with the sons. In this and other circumstances, there is much difference. Consequently, the variance of these two opinions consists herein; according to CITANDI SWARA and the rest, whether partition be made by the father or by his sons, equal shares must be allotted, conformably with the law, to the wives who have no male issue, as well as to those who have sons; according to JI MU'TAVAJJANA and the rest, when partition is made by a father, an equal share must be given to the wife, who has no male issue; and when partition is made by sons, to the natural mother of those sons. The question should be examined by the wise.

THESE shares must only be allotted, if no female property have been given; for the remaining hemistich expresses, "if they have received no wealth" &c. (LXXXIII); but if female property have been given, an equal share, completed by including that property, must be allotted, in the manner ordained in the following text of YAJNYAWALCYA:

## LXXXVII.

YAJNYAWALCYA:—To a woman, whose husband marries a second wife, must be given an equal present on that second marriage, or equal to what the new wife shall receive on her nuptials, if she had herself received none of the wealth usually given to women; but, if such wealth had been delivered to her, she is held entitled only to a moiety of part of the gift at the second wedding.

By one, who desires a second marriage, an equal present must be given to satisfy the former wife; as much as is settled for the new wife, not more nor less. But, if she had already received such wealth as is usually given

to women, from her husband's family (for the text coincides with the preceding), then a moiety, that is, less, shall be given the equivalent present shall be completed by including the female property received from her husband's family. Since it is a rule, that an exposition of law, affirmed in one case, shall be extended to others, unless some impediment occur, and since it is necessary to satisfy the question, what should be done, when female property has been already given? therefore should the same be established in the present case. Moiety (*ardha*), in the masculine gender, signifies part in general, not equal part or exact half, which is signified by the same word in the neuter gender. SRI CRISHNA TERCA'LANCA'R'A says, "as much should be given to the superseded wife as to the second wife." But VIJAYA'NE'SWAP'A thinks, the word, "equal" signifies so much as is expended at the second wedding. Both conceive, that whatever has been promised, which is fit to be given, must be delivered, provided the promise were not made under the influence of lust, wrath, or the like. The gift of less, or of a moiety, is improper, for a text shows, that a promise legally made in words, but not performed in deed, is a debt of conscience in this world and in the next (Book II, Chap. IV, v. XLVI, and XLIV). This should be discussed in the chapter on the property of women.

" His wives must have equal shares?" (LXXXIII) Equal shares with whom? To this question JI'MUTAVAHAVA and RAGHUNANDANA reply, "equal shares with the sons." For JI'MUTAVAHAVA observes, "an equal division being made by the father among his sons, all his wives must have equal shares." RAGHUNANDANA says, "the legislator ordains, that, when partition is made by a father, an equal share with the sons shall be allotted to the wife, who has no male issue." Their meaning is, this, the former text (XXVI) presenting this sense, "the father may divide the estate among all his sons in equal shares," or, in other words, give one son an equal share with another son, it is proper in the present instance to assume the construction therefrom, since it readily presents that allusion. In like manner, when partition is made by sons after the death of the father, a complete share must be allotted to a mother, who has already received such property as is usually given to women, including in that share such several property; for it is a rule, that an exposition of law, affirmed in one case, shall be extended to others, unless some impediment occur.

SHOULD

SHOULD the father, by his own choice, give equal shares to all his sons, his wives must have equal shares with his sons, if they have received no female property either from their lord or from his father, but, if such property have been given, a moiety *or other part* of a share will be ordained (LXXXVII). If he allot an excellent share to the eldest son and so forth, his wives shall not have such excellent shares and the like, but, after setting apart the deducted allotments, they shall receive equal shares together with a deduction, as ordained by ARASTAMBA (LXXXVIII).

The *Mitacsharā.*

BUT others explain the phrase, "wives must have equal shares," "they must have equal shares with each other. If female property have been given to one wife, the others must also have equal presents. Shall equal sums to that, which had been already given to one wife, be given to the rest, or shall any additional sum be given to the first, and greater sums to the rest, *for the purpose of equalising their allotments?* The difference depends on the choice of him, who makes the distribution of property acquired by himself; and the same will be also established in the case of property inherited from the paternal grandfather. Such is the mode of interpretation approved by CHANDE'SWARA, VA'CHESPATI and the rest. But it should be remarked, that, when no several property has been given to any one wife, then wealth must be given to all the wives, so that their shares be equal." They conceive, that "equal shares" in this, as in the former text (LXXXIII and XXVI), should be argued to signify equal to each other: but the present text contains a special rule, that shares, equal to each other, shall be allotted, including such wealth as is usually given to women.

THE opinion of JI'MU'TAVA'HANA is accurate, for the shares of wives are ordained equal to those of sons; and, when partition is made by sons, the share of the mother is shown equal to that of her son. On the other exposition, an honest man finds no certainty, what sums ought to be given to the wives.

"From her lord, or from his father" (LXXXIII). this is a mere inference,

france, comprehending his grandfather, mother and the rest. The meaning is this; when she has received, from any person, wealth, which should ultimately have accrued to her husband, that shall be included in completing her allotment; but, if she received it from her own father or other relative, or from the maternal uncle or other collateral kinsman of her lord, such wealth shall not be included in her allotment, because it was exclusive of his claims. Such is the method of interpretation consistent with common sense. The completion of a share does not follow from this text of YĀJNYAWALCYA; for he delivers the exception in general terms, " if they have received no wealth " &c. (LXXXIII): but it follows from the text, which contains the word moiety (*ardha*) in the masculine gender, and therefore signifying a part in general. Consequently YĀJNYAWALCYA excepts from the delivery of a full share, such wives as had already received female property.

MISRA has explained the use of the word "when" in this text (LXXXIII); but when he reserves the greater part of his fortune and gives some trifles to his sons, or takes a double share for himself, the husband must give so much wealth to his wives out of his own share alone; accordingly the separate delivery of shares to wives is only ordained, when he makes an equal partition." His notion is this; when a father makes an equal partition, his wives must have equal shares; but when he does not make an equal partition, he need not allot a share to his wife, but shall support her out of the wealth, which he reserved for himself: and equal partition signifies the allotment of equal shares to his sons and himself. This is liable to objection; for three cases have been propounded (XXVI), and the allusion to the last case would alone be relevant. It should not be affirmed, that equal shares allotted to the father and to his sons are intended: for it is declared, that he may reserve the greatest part of what he acquired; and two shares of the patrimony inherited from the paternal grandfather will be ordained for the father, who makes a partition. As for what is said by JIMUTAVAHANA, that the natural father of a son begotten on an appointed wife shares equally with the son; that is not contemplated in the text of YĀJNYAWALCYA (LXXXIII). Were it so, there would be an impropriety in abandoning the principal form of partition suggested by the general designation, to consider

the text is propounding the succession of the father of a son begotten on an appointed wife. Consequently the text only signifies, that all the sons have equal shares with each other: the double or single share of the father follows only from the texts of other sages. If he give so much wealth out of that, which he reserved for himself, does he not give a share to his wife? And, in the case, where a double share is received, a father, who had many wives, would be nearly reduced to indigence.

BUT CHANDESWARA observes, 'when the father allots equal shares to his sons, his wives also must have equal shares: and this is true, when the patrimony, inherited from the paternal grandfather, is divided, and marriages were only contracted with women equal in class; or when property acquired by the father himself is distributed without attention to the duty and piety of the sons and so forth. But, when the patrimony, inherited from the paternal grandfather, is unequally distributed with due attention to the class of wives, or when property, acquired by the father himself, is unequally divided with attention to the duty and piety of sons and so forth, wives also shall receive unequal shares in right of their class, or in right of duty and piety or the like: and that is nearly, but not rigidly, exact; for, if there be five sons born of the Brâhmanî wife, and there be one Cshatriyâ wife, and, in such a case, if certain sons be unable to earn a livelihood, and all the wives be dutiful or all undutiful, or, in the same case, if the latter circumstances be reversed, then common sense shows it proper in the one instance to allot equal shares to the wife of the same class and to wives different in class; while the sons have not equal shares, or in the other instance to allot unequal shares to the wives, while the sons have equal shares.'

AN observation should be here made, if the father divide the estate among his sons in equal shares, (or in other words if he take one or two shares for himself, and give similar allotments to his sons,) or give greater portions in right of transcendent virtue as the law directs, he must allot one share to each of his wives out of his own ascertained wealth; but, if he reserve the greatest part of an estate acquired by himself, he must defray the nuptials of his daughter and support his wife out of his own wealth, which

*be reserved : he ought to retain a sufficient sum for those purposes.* Such is the method indicated by VACHESPATI MISRA.

THE word 'wife' (*patni*) in this gloss [of CHANDESWARA] denotes the eldest wife ; for it is so employed : eldest wife means her, who is equal in class. No author has used the term to denote wife in general or of any class. However, since the espousal of a wife unequal in class is prohibited in the *Galiage*, the case does not now occur. I have not mentioned the subject of my own accord ; but every subject, which has been treated by sages and authors, is briefly discussed in a few places, for the purpose of expounding their texts and elucidating their works.

WHETHER the share be equal with that of the son, or with that of another wife, are wives entitled to the use only of the share which they receive, or have they independent power over it ? To this question some lawyers reply ; although sons had no previous ownership in their father's estate, yet, as they have independent power *after partition*, since the *father's* property is devested, so wives also have independent power : for a text declares, that property is common to the husband and wife (CCCCXV), and she therefore had ownership even prior to this partition : and, that being the case, her gift of such property is valid even without the assent of her lord ; and when she dies, it devolves on her own son alone, not on a son born of another wife. Under the text, which ordains the dependence of women (Book IV, v. V), and that, which declares property common to the husband and wife, is not a wife owner of such wealth, and, at the same time, dependent in respect of it ; and accordingly she has then no power to give or sell her own due share ? It should not be affirmed, that, since partition between husband and wife is not admitted, there cannot be any due share belonging to her. In the case of partition during the life of the father, this text propounds the shares of the husband and of the wife ; and the term 'partition' denotes several property predicated of one person alone. If it be affirmed, that, since an allotment of wealth to the wife is directed then only, when partition is made, on account of the sons, and since partition between a childless husband and his wife has not been propounded, she can have no claim to partition ; but, a distribution among sons being undertaken, a maintenance

nance alone is assigned to a wife, from the apprehension, " Should all the property be dissipated, where and how could my wives be supported?" And the amount of that alimony is fixed at a sum equal to the share of sons and of other wives *if this be affirmed*, then surely she has no power to give away, or otherwise alienate, her alimony, her husband is sole master of her and of her wealth, whether residing at the same, or at a different, place, and, when she dies, the wealth, assigned for her support, reverts to her husband or to his heir; her right is now, *after the assignment of alimony*, the same as before, in respect of expending wealth with her lord's consent, or keeping it and so forth. When this question and inference is proposed, the answer is, no, for, the dominion of the wife over the whole wealth of her husband being shown by the terms of the text (CCCCXV), and her separate property, unconnected with her husband, being similarly proved after partition, nothing prevents the validity of her gift or alienation of this wealth, any more than *her gift* of her own separate property, and there is no argument to prove, that the text of YA JNYAWALCYA, which propounds partition, intends the assignment of a maintenance. Were it so, why should it not be equally true in respect of sons? Her dependence serves to impede the attainment of religious merit by the distribution of alms, and by abstinence or the like, undertaken without the assent of her lord, and to prevent her intercourse with other men, and rambling abroad at her pleasure.

SUCH being the case, would her daughter succeed to such wealth on her death, if she leave no male issue, although a son born of another wife be living? No, for, the text (CCCCLXXVII 2) may relate solely to property received by the wife in right of her connexion by marriage, as easily as it may relate to the property of the husband, in which the wife has an interest, since there is no argument, on which one meaning should be selected in preference to the other, and the right of the husband's heirs has been alone propounded. Again, the equal title of her own son and of one born of another wife is admitted. It should not be objected, that, such being the case, the succession to female property might accrue to them on the same grounds. In respect of such wealth as is usually given to women, a property is created, originating in gift alone, and in this case, a property originating in a gift on account of affinity, and resisting the paramount dominion

dominion of the husband, is created, not property derived from affinity alone. Nor should it be argued, that the text quoted (CCCCLXXVII 2) concerns only the succession to the estate of one, who leaves no son. There is no argument, on which such an interpretation can be established: although it be inserted under the title of property left by one, who has no son, still that interpretation is opposed by proofs drawn from analogy. Nor should it be objected, that, since the share of a wife is in a manner *gratuitously* given, it ought to be held similar to female property. Being received in right of the relation of a wife to her husband, it is justly considered as similar to connected property, or wealth devolving on heirs in right of affinity. Since a wife has an interest in the whole of her husband's estate, the father's wife, whether she have, or have not, male issue, is entitled to an allotment, when partition among sons is undertaken after the death of her lord. Accordingly CHANDE'SWARA, and the rest hold, that shares must be allotted to them: and hence, the text, "after the death of the father and mother &c." (IV), showing that sons do not completely succeed to the estate, while the mother lives, declares them unentitled to make a partition without her consent. Were it so, since the husband would not be qualified to make a partition without the assent of his wife, would it not follow, that no partition could be then made by a father? No; for the right of the wife, originating in the right of the husband, is subordinate thereto. Accordingly, when the patrimony left by the paternal grandfather is divided, the allotment of a share to the wives of that ancestor is ordained. Modern lawyers hold, that shares must in that case be allotted even to those wives of the paternal grandfather, who have no sons. When property left by the paternal great grandfather, is divided, should not a share be allotted to his wife? That is admissible from parity of reasoning; and the particle in the phrase, "and wives of the grandfather" (LXXXIV), connects the terms with what is *understood* but not expressed. As for what is deduced from the law, that no share should be allotted to the wife, unless partition be made among sons, it is founded on the independent authority of scripture, *that is, on the letter of the law*; else, according to your opinion, since there is no distinction in their want of ownership, the reason of the law must be shown for this maxim, "that partition shall be made on account of the son, not on account of the wife." Let it not be objected, that the authority of scripture should be acknow-

ledged as the foundation of civil law in every case. When the reason of the law is apparent, it would be wrong to abandon it. Accordingly YAJNYAWALCYA declares; "if two texts of law differ, reason, or that, which reason best supports, must in practice prevail." As for what is argued, that, when the husband's property is devested, the property of the wife, originating therein, is also annulled: there are no grounds for this induction; for there is no ordinance to that effect, like the text (CCCCXV), which serves to prove the right of the wife to be coexistent with the husband's; and property is not devested, when the act, which created it, is past; else, the property of the donee would be annulled so soon as the acts of giving and accepting were past. In like manner, a thing given, at the time of partition, to a wife, a mother, a grandmother, and a great grandmother, cannot be aliened or sold by the husband and the rest; but the gift or other alienation by the wife or owner is valid.

Such is the answer given by some lawyers to the question proposed: and that is not unacknowledged by BRAHMANEVAKA. He says, "in fact wives have an interest in their husband's estate; under the text which declares property common to husband and wife; and by the authority of texts, if there be a son, a son's son, or a great grandson, since these offer the double and single sets of funeral cakes, a share must be allotted to them, as bearing equal pretensions with the mother; but, on failure of them, wives alone succeed to the whole estate: this must be admitted by the wife." Although the mother survive, the son has property in the paternal estate, after the demise of his father, of whom the principal right was predicated; and the mother's rights, which is subordinate, neither resists nor is resisted, by any other. Accordingly, though the first wife have property in her husband's estate, another subsequently married, has also property in the same. The author of the *Mitakeśvara* likewise admits the ownership of the wife in the whole of her husband's estate; and he therefore admits partition with the wife; so that it be made by the choice of her husband, not by her own. He has not said, that a maintenance only shall be assigned to her. However, he has directed, that a deducted allotment shall be also given, as ordained by the text of APASTAMBĀ.

## LXXXVIII.

APASTAMBA :—THE furniture, the house, and the ornaments shall be allotted to the wife.

HENCE the gift, sale, or other alienation of her own share, by a wife, is valid. However, since women are not independent, that gift is immoral. This opinion is so proved. But to that, VACHEPATI BHATTACHARYA does not concede ; because the assertion, that a share is given to wives, mothers and the rest, in right of a property *already vested*, is not accurate. For, were it so, a share of property, inherited from remote ancestors, must be given to the grandfather's grandmother and the rest. Or, even granting, that a share must be given to those matrons, if they have not already received any allotment, then, should a childless Brâhmaṇa leave a Vaśā wife, she would also receive a share, when partition is made among his uterine kindred, who are alone entitled to the succession : and, were it so, a new practice, not approved by any author, would be introduced. As it is admitted, that the natural mother of an only son shall receive no share, since it has not been ordained by the text of any sage, so it is reasonable, that no share should be allotted to a great grandmother. As for what is affirmed, that a wife has a secondary claim on the whole of her husband's estate, under the text which declares property common to husband and wife; be it as it may according to the opinion of those, who contend for her several property, still partition is not made in right of that property, but partition between husband and wife must be reconciled like that between father and son. When partition is made among sons, a share is allotted to the mother, for the sake of natural affection, to establish the validity of the son's share, and for the sake of independence : if the share, allotted to a wife or mother, be consumed in her support, she is entitled to receive alimony from her husband or son ; for, at all events, she must be maintained : but if a surplus remain above the consumption, and the husband's wealth be wholly dissipated, he may, by parity of reasoning, resume property from his wife, as he might resume it from his son. However, the share allotted to a wife and the rest, like that, which is given to a son, may be disposed of at their pleasure. Hence, like female property, the gift, sale, or other alienation of that share is valid ; for it is equally given her by her husband and the rest. Such is the just

just rule of decision according to both opinions. However, there is no reasoning, which can show it incumbent on great grandsons and the rest, to allot a share to their great grandmother. Consequently, when partition is made by a father, he must give to such of his wives as have no male issue, an equal share with his sons ; and when partition is made among sons or grandsons, they must allot to their natural mother or grandmother an equal share with themselves ; but, if female property have been given to any one wife, by a kinsman sprung from the same race with her husband, that shall be included in completing her share. No allotment shall be given to a great grandmother. Such is the opinion of JÍMU'TAVA'HANA and the rest. But S'RÍ CRÍSHNA TERCA'LANCA'RÁ holds, that a share must be also given to the father's step-mother. To establish this opinion, the reason of the law ought to be shown. It cannot be affirmed, that the argument may be drawn from the word "all" (LXXXIV), which would otherwise be nugatory. That the word "father" would thus become unmeaning or *would want precision*, cannot well be disproved. As for what he asserts, that the wife of the grandfather claims a share of the grandfather's estate only, still we perceive no other reasoning, by which this maxim can be maintained, except a title founded on her secondary property in the grandfather's estate. That author does not admit the validity of gift, sale, or other alienation by a wife and the rest. This brief exposition may suffice.

CHANDE'SWARA and the rest differ, *contending*, that shares must be allotted to all the wives and the rest, whether they have, or have not, sons. But others hold, that the allotment of shares to wives, as directed by YA'JNYAWALCYA, is not intended for partition between husband and wife; since APASTAMBHA forbids such a partition.

#### LXXXIX.

APASTAMBHA :— PARTITION does not take place between a wife and her lord. From the time of taking her hand in marriage, her aid in *all* acts is required, as well as her participation in the pure and impure fruit of action, and her concurrence in the receipt of wealth; sages do not deem

it a theft, if a gift be made by a wife for a *just cause*, during the *absence* of her husband.\*

It relates not to partition between husband and wife, for it would contradict common sense, that, living at different places upon separate property, they should co-operate in religious rites ; and, *again* because APASTAMBA shows them to be associated in the acquisition of wealth ; and *lastly* because partition cannot be effected between them, since the wife's claim on property acquired by her husband after partition could not be barred. The wife shall not daily receive a share of *the daily gain*; nor can she, after separation, have immediate power over her husband's wealth ; nor can the text, which declares property common to husband and wife, be silent from the day when partition is made. Therefore, when the paternal estate is equally divided, should it be impracticable to support his wives out of his own share alone, the husband may take a share for each of his wives, and live in one abode with his wives thus enriched : their partition only takes place with his sons. Accordingly, the expression of JI'MU'TAVA'HANA, 'for the want of partition is incidentally mentioned, like the want of partition between husband and wife,' is censurable. On the interpretation of JI'MU'TAVA'HANA and the rest, is not this inconsistent with the expression, "when the father makes an equal partition" (LXXXIII) ; for a father receives two shares of the wealth inherited from the grandfather? No ; for equal shares denotes equality with each other : and the quantity, not the number, of the shares has been thereby restricted. Consequently the equality of *each* of the father's two shares with those of the brethren is propounded. According to the opinion of those, who contend for the equal dominion of both father and son *over property of every kind*, is not the text, which will be cited (XCII), nugatory? No ; for that text only intimates the ownership of both ; the present text (LXXXIII) implies partition. Reasoning, *say these lawyers*, which contradicts numerous authors, and sets at variance the texts propounded by sages, is a modern mode of *exposition*.

If a man leave two wives, and by one, two sons ; and by the other,

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just rule of decision according to both opinions. However, there is no reasoning, which can show it incumbent on great grandsons and the rest, to allot a share to their great grandmother. Consequently, when partition is made by a father, he must give to such of his wives as have no male issue, an equal share with his sons ; and when partition is made among sons or grandsons, they must allot to their natural mother or grandmother an equal share with themselves ; but, if female property have been given to any one wife, by a kinsman sprung from the same race with her husband, that shall be included in completing her share. No allotment shall be given to a great grandmother. Such is the opinion of JÍMU'TAVA'HANA and the rest. But S'RÍ CRÍSHNA TERCA'LANCA'RÁ holds, that a share must be also given to the father's step-mother. To establish this opinion, the reason of the law ought to be shown. It cannot be affirmed, that the argument may be drawn from the word "all" (LXXXIV), which would otherwise be nugatory. That the word "father" would thus become unmeaning or would want precision, cannot well be disproved. As for what he asserts, that the wife of the grandfather claims a share of the grandfather's estate only, still we perceive no other reasoning, by which this maxim can be maintained, except a title founded on her secondary property in the grandfather's estate. That author does not admit the validity of gift, sale, or other alienation by a wife and the rest. This brief exposition may suffice.

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four, partition shall be made, as abovementioned, among the brothers of the whole and half-blood; but what shares should be allotted to their respective mothers? To this CHANDESWARA and the rest would reply, the estate must be divided into eight shares, and two must be given to the mothers, for they are equally wives of the father; (but if any widow belong to a different class from her late husband, she shall receive her portion, according to the share which is allotted to her own son, or which would have been allotted to him, had she had one;) the six brothers take six shares. But the author of the *Dipacalica* seems to think, that no share shall be allotted to the mother, who has sons living; for he cites the text of VYASA, premising these words, 'the sage propounds a special rule.' However, SRI CRISHNA TERCALANCA RA observes in his commentary on the work of JIMUTAVAHANA, 'both are not entitled to shares, since both are not natural mothers of all the sons; and the natural mother, according to JIMUTAVAHANA and the rest, is alone entitled to a share.' On this it should be remarked, that a question remains, whether one wife of the late proprietor shall receive a share because she is natural mother of him, who makes the distribution, or whether she shall receive no share because she is not the natural mother of a certain other son. According to JIMUTAVAHANA and the rest, "son," in the text which will be cited,\* signifying born of her womb, it is a settled rule, that a widow shall receive from sons, who were born of her, an equal share with them, and she cannot receive a share from the children of another wife; therefore, she can only receive her share from her own sons. Let it not be objected, that, were it so, the share of the one might be less than that of another brother. When partition is made, the share allotted to the mother may be formed by two operations: one share may be assigned to the son, and again a part of that share to the mother; for equal partition can be effected by this method: For example, in the case proposed, if the estate amount to twenty seven thousand *sauernas*, a share amounting to four thousand five hundred *sauernas* being allotted to the son of her, who has borne two sons, three thousand *sauernas* are set apart on one side, and one thousand five hundred *sauernas* on the other side. In that case the two parts of shares are equal to the allotment due to one son; the same is also

\* The chapter has omitted certain in proper place. See a version of it in a note preceding LXXXVII.

true of the other: and the two parts become the share of the mother. The difficulty may be thus reconciled.\*

If the son refuse to deliver the share of his natural mother, she may exact it even by forcible means; for the ordinance would be otherwise nugatory; the term "equal share," would be unmeaning; and the word "equal," used in a positive sense, would be futile. This inference stands uncontradicted by any author. But, at present, solely through the tenderness of the mother, such a practice does not occur.

SOME lawyers hold, that, when partition is made during the life of the father, he shall give an equal share to his wives, whether they have, or have not, sons: and that share is merely allotted for their maintenance; since partition between husband and wife is forbidden, and the text, which declares property common to the married pair, renders vain a partition, which has even actually taken place. Again; when partition is made among grandsons, an equal share with themselves must be allotted by them to their father's wife, who has no male issue, and to the wife of their grandfather; not to her, who has male issue, for the text of VYĀSA expresses, "but the wives of the father, who have no sons" &c. (LXXXIV). Their natural mother, most venerable, having borne them from her own body, must be honoured with all their wealth and with every exertion of labour. And this is reasonable: since wives must have property while their husband lives, because they are associated with him, shares must be allotted by an aged father for the support of his wives: but, if he reserve for himself as much wealth as he pleases, there is no occasion for such an allotment of shares. When partition is made after the father's demise, since a mother has a claim on the whole of her son's property, she may be supported out of his own share: but, unless the stepmother, who has no son, receive a share, she might have no subsistence but what she obtained in alms. However, the duty of reverence towards mothers is ill fulfilled by the perverse people of the present day; for this cause, they are sometimes compelled by virtuous men to allot some wealth as a fixed share. In that case, a gift made on temporal considerations, for a

\* The author would have found the example erroneous, had he pursued his proof, for he cannot so distribute the remainder among the four sons and their mother. T.

worldly purpose, by a wife or widow, and a sale or other alienation for her own pleasure, are not valid: but it is fit she should have power to give, sell, or otherwise alienate, her allotment for her own support, or for religious uses; since it was delivered to her for those very purposes.

BUT when the father of an only son leaves one wife, then food and vesture only shall of course be allotted to her; since no text propounds the immediate appropriation of a share; and the law has only ordained the allotment of a share to the mother or stepmother, when partition is made among sons. Again; when a distribution is made by a father, if his own mother be living, no share is claimed for her; since the law has only ordained the allotment of a share to the mother, when partition is made by sons with each other. It should not be argued, that *her participation* may be deduced from the law, which ordains the allotment of a share to a grandmother, in the case of partition among grandsons. This is not partition made by her grandsons, but by her son; it is, therefore, a distribution made by her own son. According to the opinion of those, who contend for the equal dominion of father and son over property inherited from the grandfather, there is this difference, that a share must be allotted to the grandmother; since partition by the choice of the son is admitted. When partition of property, which he himself acquired, is made by a father, the share of his wife and the rest seems to be incidentally discussed. A father may divide, at his pleasure, property which he himself acquired, giving more to some and less to others; or he may give the first born the portion of an eldest son; or make all the shares equal: these three cases are considered in the *Retnacara* as solely relating to partition during the life of the father. The text, which concerns property inherited from the grandfather, shall be subsequently cited. This appears to be implied.

BUT some consider the first case only as relating to property acquired by the father; for all the cases cannot be regulated by his sole pleasure. Under this case is propounded the reservation of the greatest part of his fortune, and the unequal distribution among sons in consideration of duty or piety, and the like. Under the second case is presupposed the allotment of an additional portion to the eldest son. The third case relates to sons equally dutiful and the like, and to property inherited from the grandfather.

WHAT is meant by "property, which the father himself acquired?" That, which the father has acquired by the acceptance of presents, by the use of arms; by agriculture or commerce, by service or gaming, without employing property left by his own father: this is signified by the term. VRĪHASPATI propounds another kind of property acquired by a man himself.

## XC.

VRĪHASPATI:—OVER property, descending from the grandfather but seized by strangers, which the father recovers by his own power; and over what he has gained by science, valour or the like, the father has full dominion;

2. He may give it away at his pleasure, or withhold it from partition: but after his death, his sons are pronounced entitled to equal shares.

"By strangers," must be supplied: Through inability, it was not recovered by the grandfather.

MISRA and CHANDESWARA.

AND it has been gained or recovered by the father, through his own ability: The father has full dominion over such property; and over that, which he has gained by science, valour or the like: According to the interpretation of CHANDESWARA and the rest, the expression, "if it were gained on the adventure of property left by his father, it is treated as property descended from the grandfather," is truly pertinent; and, according to this interpretation, the term "by his own power" must be considered as certain and positive.. MISRA accordingly adds, "provided it were acquired without adventuring wealth, which had descended from the grandfather."

IT is said, "the father has full dominion:" has he no dominion over property, which had descended from the grandfather and has not been seized by strangers: or has he dominion, but in conjunction with some other person?

To solve this question, the legislator subjoins *the second verse* (XC 2). Consequently, at his sole pleasure, he may exclude from participation one, who behaves disobediently or the like, and give a greater share in consideration of filial piety or the like, partition is made at a time regulated by his pleasure; and he may reserve the greatest part for himself, when property, descending from the grandfather but seized by a stranger, is recovered by him. But, in the case of property left by the grandfather and not seized by a stranger, the father is governed by rules of law. Such is the opinion of JI'MU'TAVA'HANA and the rest. But according to VIJNYA'NE'SWARA and others, the father and son have equal dominion over property inherited from the grandfather, and which has not been seized by a stranger; but the father alone has dominion over that, which had been seized by a stranger and is recovered by him. "After his death &c." (XC 2); this concerns partition among brothers after the death of their father, the portion of an eldest son not being deducted as above-mentioned.

## XCI.

**MENU and VISHNU:**—AND if a father, by his own efforts, recover *a debt or property unjustly detained*, which could not be recovered before by his father, he shall not, unless by his free will, put it into parcenary with his sons, since in fact it was acquired by himself.\*

From the phrase, "which could not be recovered before," it follows, that it had been seized, or was unjustly detained, by strangers. Property of his father, so circumstanced, which the father recovers, is in fact acquired by himself; he shall not, unless by his own free will, divide it with his sons. If his own pleasure be consulted in respect of property acquired by himself, is not the rule different in respect of property inherited from ancestors? YA'JNYAWALCYA declares that rule.

## XII.

**YA'JNYAWALCYA:**—OVER land acquired by the grandfather,

\* *Yajn., Ch. 5, v. 209.* From the text, it has been differently translated differently. the first version is more literal.

over a corody, out of mines or the like, settled on him and his heirs by the king, and over slaves employed in his husbandry (or over gold, and the like; for the word dravya, is expounded variously), the father and the son, when the grandfather dies, have equal dominion.\*

"A CORODY;" a fixed pension, receivable out of mines or the like, and settled on him and his heirs by the king or other benefactor. "Wealth" (dravya); gold or the like. Over these, namely, over land and the rest, the father and son have equal dominion. Partition is made even by the choice of the sons, and the shares are equal, as declared by VRĪHASPATI.

The Dipacalica.

### XCIII.

**VRĪHASPATI:**—Of property acquired by the grandfather, whether moveable or immoveable, equal shares are ordained for the father and the son.

THE commentator considers "moveable" as here signifying any thing not immoveable, as gold or the like. In expounding the text of YAJNYAWALCA (XCI), the Rennācara has this gloss; "that, which is fixed or made fast (nibadbyate), is a corody (nibandha); or fixed pension receivable out of mines or the like." "Equal dominion;" in this case no greater share is allotted to one than to another; nor can the father give away such property at his pleasure.

### XCIV.

**VYASA:**—A FATHER and his sons shall have equal shares of a house or of land, which had descended from ancestors; but, against their father's will, sons cannot claim a partition of wealth acquired by their father.

"A house or land" is a mere instance, as appears from the term "paternal" which denotes wealth acquired by the father himself. It is intima-

ted, that, even against the father's will, partition of property inherited from the grandfather may be claimed. What will or choice is meant, shall be explained, in discussing the opinion of JI'MU'TAVA'HANA and the rest. Consequently, the opinion, delivered by the author of the *Dipatatalica*, is correct, that 'partition of land, and gold or the like, inherited from ancestors, may take place by the choice of the son; and the father and son have an equal right to one share each.' In the text cited by JI'MU'TAVA'HANA (Book II, Chap. IV, v. XIII), the words "neither the father," which occur in the last part of the text, bear allusion to property acquired by the father himself; "nor the grandfather" is a mere instance of any ancestor, the great grandfather and the rest. It should not be alleged, that the words "nor the grandfather," are nugatory; since he or any remoter ancestor is father of his own son. Should a dispute arise between grandsons and one who affirms, "this landed property was given to me by their grandfather," the text is intended to show the invalidity of such gift. Thus some expound the law. Others argue, since the donation will be subsequently declared valid though immoral, the phrase must be otherwise expounded, in this mode; since the grandfather has an interest in that which is acquired during his life by his son (Book II, Chap. IV, v. LVI), and his power of alienating it might be supposed, therefore is this text propounded concerning property acquired by the father. Others again argue, that, as a man is controlled by his son in respect of immovable property, so is he also controlled by his grandson and the rest: to intimate this, it is said, "nor the grandfather." Consequently, according to this opinion, a father is not independent in respect of precious stones, pearls or the like inherited from the grandfather, nor in respect of immovable property acquired by himself. Accordingly, the text quoted in a former book (Book II, Ch. IV, v. XIV) is truly apposite; and the text cited by RACHUNANDANA (XCV), is also pertinent.

## XCV.

*Uncertain*:—By their father's indulgence sons consume vesture, and ornaments, but let not immovable wealth be consumed even though the father be indulgent.

According to this opinion, does the text now cited relate to property belonging

belonging to the grandfather, or to that, which belongs to the father? The first *suggestion* is not *right*; for the father is not independent in respect of vesture and ornaments appertaining to the grandfather. The second *suggestion* is not *right*; for the practice of good men also shows validity in the alienation of property belonging to the grandfather, through *his* indulgence. To this it is answered, dominion over the father's estate during his life is not propounded by declaring the equal dominion of father and son over property inherited from the grandfather; for that inference has been already disproved. But the father alone has absolute property; and equal dominion is affirmed to show, that no unequal partition can be made in this case. Consequently, a gift made by the owner is valid; for he is not insane nor otherwise incapacitated. In like manner, by declaring, that "the father has no power" &c. (XXVIII), he is prevented from making an unequal division without a sufficient cause. Again, donation and sale are forbidden to show the immorality of the act, not to annul the gift or alienation; and that is evident on the exposition of JISMUTAVAHANA and the rest. The gift of vesture and ornaments, through indulgence, is not forbidden.

Or vesture worn on the body may be compared to ornaments worn by a wife during her husband's life (CCCCLXXXIII): such vesture and ornaments, used though not *expressly* given, belong to the wearer. The father infringes no prohibition; for he has not aliened them. But the dissipation of immoveable property is not legal. That is declared by the text (XCV). Consequently this text relates both to the property of the father and to that of the grandfather.

Since a householder is not his own master in respect of what has descended from an ancestor, as declared in the text cited by RACHUNANDA and others (Book II, Ch. IV, v. XV 3); and since NA'ERA'DA pronounces void a gift made by one, who is not his own master (Book II, Ch. IV, v. LIII 2); the gift of property, which had descended from an ancestor, being made by the father even through indulgence, should not be valid. As for what is said, that gift and sale are forbidden, to show the immorality of the act, not to annul the alienation, that is incorrect; for the invalidity of the gift is intimated even by the phrase "let not immoveable wealth be consumed."

It cannot be a practical truth, that a man may not consume that; of which his gift would be valid; and there is no argument, by which it can be established to be a moral truth: neither, *on the other hand*, is it inconsistent with common sense. The seeming difficulty is thus removed. As for the second case, the text cited (Book II, Ch. IV, v. XV 3) has been otherwise expounded in the chapter on subtraction of gift: and, if any father, infringing the law, absolutely give away the whole, or part, of the immoveable property acquired by himself, or inherited from his own father, that gift is valid, provided he be not impelled by lust, or wrath, nor act with guile, or the like. However, he commits the moral offence of violating the law. More on this subject shall be subsequently delivered with the opinion of JI'MU-TAVA'HANA and the rest. Accordingly it is recorded in the Purāṇas and other works (and instances of the practice sometimes occur in certain countries), that a king has bestowed his *whole* kingdom on a son preeminent in virtue, or senior by birth.

The father of an only son shall reserve two shares under the rule of SANC'HA and LIC'HITA (XLIV). The text of NĀ'RADA (XCVI) and that of VRITHASPAṬI (XCVII) concern this very case. Thus far has been detailed the exposition delivered in the *Dīpocalicā* and other works. We next proceed to the opinion of JI'MU-TAVA'HANA and the rest.

By declaring the equal dominion of father and son over property inherited from a grandfather, it is intimated, that, when one son, deceased in the lifetime of his father, who is since dead, the grandsons shall take their own father's equal share when partition is made; the whole shall not be taken by sons alone, in right of proximity, nor because they give two funeral cakes, which the last possessor was also bound to offer, namely: to his father and grandfather, whereas his grandsons only offer a funeral cake to his father. "Grandfather" is in this place an instance merely, which comprehends the great grandfather; and "father" comprehends the grandfather. The text is interpreted verbally according to the literal sense, and figuratively according to the secondary sense; and this is suggested by the coincidence of the text of CATYĀYANA (LXXIX). Or the interpretation, proposed by DHARESWARA, may be admitted, as follows; in the case of

property acquired by the father himself, unequal distribution in consideration of filial piety or the like is not immoral, but, in the case of property inherited from the grandfather, it is immoral. Should an unequal distribution of property inherited from the grandfather be nevertheless made, a second partition cannot be required; but the father is guilty of a moral offence, as is intimated by JIMUTAVĀHANA in these words, 'unequal distribution made by a father is only lawful, morally considered, in respect of property acquired by himself.' Consequently, since the father has full power over wealth, which he himself acquired, his unequal distribution of it is lawful, but, in respect of property inherited from the grandfather, that unequal distribution, morally considered, is unlawful. This appears to be his meaning. Since texts, which propound a control in regard to property inherited from the grandfather, seem to intend generally moveable as well as immovable property, YAJNAYAWALĀCYA (XCII) delivers a special rule to obviate that conclusion. Consequently, since the father has full power over precious stones, pearls and the like, even though inherited from the grandfather, there is no objection to his unequal distribution of such property. It is only forbidden in the case of land and the like and the word 'wealth' (*dravja*) here signifies bipeds, as slaves and the rest, for they are attached to the glebe, being employed in the husbandry; and slaves, as well as immovable property (such as land and the like), are mentioned in a text above cited (Book II, Chapter IV, v. XIV). Such is the exposition of RAGHUNĀNDANA. In the text of VYĀSA likewise (XCIV), the terms "a house or land" comprehend a corrody and, slaves as well as immovable property; and the term "moveable" in the text of VRĪHASPATI (XCIII) intends slaves only; this is made evident by another text (Book II, Chapter IV, v. XIII). Since the word 'grandfather' occurs in the text, this, says JIMUTAVĀHANA, relates to his property and as appears from the word 'whole,' repeated in that text, the gift of all the precious stones, pearls, and the like, inherited from the grandfather, is not immoral, but a gift of the whole immovable property is an offence. Even though the immovable property be acquired by the man himself, it is proper to affirm, that the gift or other alienation of it is immoral (Book II, Chapter IV, v. XIV). Then what difference is there between immovable property acquired by the father, and that which is inherited from the grandfather? The difference consists in the legality or illegality of unequal

equal distribution in consideration of filial piety and the like. But if the whole immoveable property be given away, the consequent distress of the family, through want of subsistence, is the sole cause of moral guilt: the gift or alienation is not annulled; for it is made by an owner, who is neither insane nor otherwise incapacitated. MEGU inculcates the necessity of supporting the family (Book II, Ch. IV, v. XI).

SOME incidental observations may be added. Two texts cited by JI MU'TAVA'HANA (Book II, Ch. II, v. VI, and Ch. IV, v. XVIII 5) are also intended to show the immorality of the act, not to annul the sale or other alienation; for each parceller has an uncertain interest in the whole. The sense of the text explains the cause, since one's parceller has not competent power, therefore he ought not to sell or give away immoveable property, which the family hold in coparcenary; accordingly heirs have a lien equally on the immoveable heritage, whether they be divided or undivided; that is, one has not a greater or less lien than another. "Divided" supposes the case where any part of the immoveable heritage remains in common. But, on this interpretation, we do not determine, for what purpose the word "immoveable" is added. The opinion is liable to this objection; according to JI MU'TAVA'HANA, who contends for dispersed property vesting severally in the coparceners, there is no difficulty in not establishing, that a declaration in the subjoined form does not deprive property; "let this, whether it belong to another or to me, become the property of DEVADATTA." But that has been asserted, because NAREDA, under the title of subtraction of gift, not noticing joint-property among things deemed ungiven, enumerates it among those, which may not be given. Hence, whether it be common to the parcellers (the several property being yet unascertained by partition), or be the several property of one, the gift or other alienation of effects, made by one heir without the assent of the rest, does annul his rights, but with their assent, it transfers the property of all the coheirs. In this case, all partake of the merit of the gift, or share the price of the sale, and so forth; but, when aliened without their consent, he, who alienes it, alone incurs the moral guilt, but all partake of the loss. This is a demonstrated rule. However, if he give away that, which ought not to be given, common sense shows, that he shall be punished.

RAGHUNANDANA observes, "the text cited (XCV) relates to property, which had descended from the grandfather; that only, which has been acquired by the father himself and is given by him, may be consumed; else another foundation of law, besides scripture, must be sought?" What text of scripture can be now produced as the foundation of these laws? It should not be affirmed, that the scripture, on which the text (Book II, Chapter IV, v. XIII last hemistich) is founded, may run thus; "aliene not the immoveable property of a grandfather." A text of scripture, which prohibits the alienation of immoveable property acquired by a man himself, must also be sought, for the ground of another text (Book II, Chapter IV, v. XIV); and it cannot have the same import with that, which forbids the alienation of the immoveable patrimony, by showing the gift to be invalid through the medium of forbidding the consumption of the immoveable wealth (XCV). To this it is answered, RAGHUNANDANA considers this text as relating to partition of heritage, since that subject is discussed in his work both before, and after, the quotation of the text. Consequently immoveable wealth, inherited from the grandfather, and given or unequally divided, through the indulgence of the father, or through his favour, in consideration of filial piety, of a large family to maintain, or of inability to earn a livelihood, shall not be consumed or enjoyed *as so distributed*; for this coincides with the text, which declares the equal dominion of father and son. But precious stones or the like, inherited from the grandfather and so distributed, may be *so enjoyed*; for that coincides with another text (Book II, Chap. IV, v. XIII). But some think it reasonable to infer from the text (XCV), that a valid gift, sale, or other alienation at the pleasure of the father, is only unobstructed in the case of property different from the immoveables inherited from the grandfather, not in the case of land which appertained to that ancestor. That is wrong; for the term "at his pleasure," in the text of VISHNU (XXV), denoting arbitrary choice, cannot relate to the double share. But, after premising the text of NAREDA as relating to the patrimony inherited from ancestors, the observation, that this text (XCV) concerns the patrimony so inherited, refers it to subtraction of gifts, which would be inelegant; and it would contradict a subsequent remark, "because property, consisting in the power of aliening at pleasure, exists equally in this, and in other wealth." For the fifth

or ablative case, signifying the reason, is only pertinent under the rule, that whatever be held as property by any person, his gift of it is valid. But that rule is in this instance infringed; for, wealth left by the grandfather being held as property, the gift of it is, nevertheless, invalid. Let it not be argued, that, since it is necessary to suppose in that rule cases different from the sixteen void donations, which have been propounded by NĀRĒDA for the purpose of annulling a gift made by an insane person, and so forth, there is no breach of that rule in this instance, because it falls within the sixteen void gifts; since the householder is declared not to be independent in respect of wealth inherited from ancestors (Book II, Chap. IV, v. XV. 3). Were it so, he would have no independent power over precious stones and the like inherited from his forefathers. Nor should it be argued, that the text (Book II, Chap. IV, v. XV. 3) relates to other wealth besides precious stones and the like, since it coincides with that of YĀJÑĀWĀLCĀRA (Book II, Chap. IV, v. XIII). There is no authority for restricting the sense; and the text (Book II, Chap. IV, v. XV. 3) bears a different import, being delivered under the title of subtraction of gift. Accordingly, the author of the *Mitśekhāra*, otherwise expounding the equal dominion of father and son over property inherited from the grandfather, says, 'the gift is not void in this case.' He adds, 'even what the grandfather himself acquired, ought not to be given away by him, if his son or grandson be living.' and in the title of subtraction of gift he expressly says, that 'gifts are only invalid in the sixteen cases of void donations.' So, in expounding the text, relative to land acquired by the grandfather (XCII), he notices this distinction, 'but, over property inherited from the grandfather, both have indiscriminate dominion; the sons have therefore power to forbid alienation.' Neither CHĀNDĒSWĀRA, nor any one of his followers, has affirmed in express terms, that the gift of property, which had descended from ancestors, is invalid. But JI'MU'TAVĀHĀNA, who is followed by RĀGHUNANDĀNA, considers the text (Book II, Chap. IV, v. XIII) as forbidding gift or alienation.

In partition of property inherited from the grandfather, whose will is consulted? The answer is, partition is granted by the sole will of the father; for he is owner of that wealth. Consequently, the term "at his pleasure," in the text of VISHNU (XXV), signifies his pleasure relative to unequal partition,

tion, not his will expressed in these words "let there be partition." In like manner, by declaring equal dominion, that option of unequal division is excepted, not the choice of partition in general. Again; the text of MENU (XCI) supposes no desire to make an unequal division. In the text of VYASA (XCIV), the same is also supposed in the term "against his will." No distinction of property acquired by the father or grandfather being propounded in the several texts (XXII, XVII, XX, &c.); this circumstance is the foundation of the present inference. It is liable to this objection, that there is no ground for judging what kind of will is determinately meant in the texts of VISHNU and the rest. In the phrases, "he shall not, unless by his free will, make a partition;" "he may give or reserve, at his pleasure, any part of his own acquired wealth;" and "against their father's will sons cannot claim a partition;" will is considered as relating to partition alone, as appears from the context; but here, again, there is no proof, that partition can only be made by the will of the owner; for, in the case of payment of debts, delivery occurs by the will of the king or by that of the creditor, who receives payment. Let it not be argued, that, were it so, partition or gift might be exacted at the option of a stranger. Property and its owner are not subject to the control of a stranger. Accordingly sale does not take place by the will of the purchaser. Then how can the father, and the patrimony which had descended from the grandfather, be subject to the control of the son? For this very purpose, ownership is figuratively attributed to the son. Consequently, the bank of the Ganges, though different from the river itself, being figuratively called by that name in the phrase a cowpen situated on the Ganges, and in similar expressions, as the coolness, purity and other properties of the Ganges are thence assumed; so, ownership being figuratively attributed to the son, though he be not the true owner, a right attendant on ownership is alone assumed: and that right consists, according to JI'MU'TAVAHANA, in the power of claiming partition, and in that of resisting unequal division; for there is no ground for selecting one of these rights to the exclusion of the other. It does not consist in taking an equal share, with the father; for that is not acknowledged by JI'MU'TAVAHANA. This, properly explained, is the life of the opinion maintained by CHANDESWARA and the rest. However, there is this difference according to them, that the son has only dominion over the patrimony inherited from the grandfather.

WHAT is the father's share of the patrimony inherited from the grandfather?

## XCVI.

**NA'REDA** :—A FATHER, making a partition, may reserve two shares for himself.

THAT is, a father, dividing the estate, may reserve two shares in his own right. This text, not being applicable to his own acquired wealth, for which it is already provided, that he may keep the greater part of it and remain in his house (XXIII), must relate solely to wealth inherited from the grandfather.

## XCVII.

**VRĪHASPATI** :—THE father, who, during this life, divides the land, which his own father left him, may himself take, twice as much as each of his sons.

This and the text of **SANC'HĀ** and **LIC'WITA** (XLIV) must be considered as relating to that subject. In the text cited (XLIV) the apposition of the words "one" and "son" is in the form called *tat puruṣa*, "son of one;" for this form is preferable to that, which is called *babubrībi*, because the last term predominates \*. By this expression, the son of two fathers is excluded from the text. Sons begotten on the appointed wife by a kinsman are sons of two fathers, because they are produced by the seed of one in the field of another (CCXXXIX). The same is also true of sons given and other adopted children. Since the apposition called *babubrībi* may be also admitted, when the sense it conveys can be justified by reasoning, the observation of **CHANDE'SWARA** and the rest, that 'the father of an only son shall have two shares, but the father of two or more sons shall have one share,' is accurate. If this be alleged, it must be inquired, what reasoning can justify the variation of the father's share with the difference in the number of sons. It should not be argued, that, since the parity of shares is ordained by a text of **VRĪHASPATI** (XCIII), the double share must of course be affirmed to be the sole right of a father, who

\* A reason founded on a grammatical rule T.

has an only son. The seeming difficulty may be removed by explaining that text of *VRIHASPATI* as relating to the father of a son begotten on an appointed wife by a kinsman. Again; the father is sole owner of wealth inherited from the grandfather, as well as of that, which is acquired by himself; by his choice, partition is made; and he shall have two shares. But the adoptive father of a son, begotten on his wife by a kinsman, shall have one share, because *his paternity* is inferior, having adopted the offspring of a different natural father. This concerns immoveable property and the like. 'But, in the case of precious metals, pearls and the like, the father may reserve the greatest part of such wealth, and he may make an unequal division of it, giving more to some and less to others. Such is the opinion of *JIMUTAVAHANA* and the rest.

LET sons be distressed by a gift or other alienation in favour of an unworthy object; it is forbidden in the case of immoveable property, even though acquired by the father himself (Book II, Ch. IV, v. XIV). Consequently, the father is guilty of no offence in giving away or otherwise alienating such property with the consent of his sons. The text, relative to enjoyment by indulgence (XCV), proounds a distinction between property real and personal, in respect of a valid title vested by mere enjoyment through indulgence. The gift of immoveable property and the like, to sons and the rest, is valid, as it is to strangers. The texts of *YAJNAYAWALCYA* and *VRIHASPATI* (XXXIII and XXXI) relate to wealth acquired by the father; for they coincide with the text of *NARADA* (XXXII), which must relate to the property of the father, since it expresses, "the father is lord of all." However, the unequal distribution made by a father, in consideration of his property or the like, has been already restricted to his own acquired property: that cannot take place in respect of wealth inherited from the grandfather.

BUT others argue from the text of *MENU* (XCI), which forbids participation, unless by his free will, in the hereditary estate, which has been recovered by the father, that in other cases participation may be claimed even against his will. Thus alone can the text of *VYASA* (XCIV) be accurately applied.

By the word "equal," in the texts of *YAJNAYAWALCYA* and *VRIHASPATI*

(XCII and XCIII), the parity of rights is propounded : and that parity consists in the son's concurrent option of claiming partition. As, in consequence of the father's ownership, a distribution takes place by his choice, so likewise, in consequence of the son's *title*, under the authority of the law, partition also takes place by his choice. Such is the practice. Parity in regard to chattels equal in value or the like, so that the son shall receive the very same amount, which constitutes the father's share, is not intended : for his double share is ordained by the texts of *NA'REDA* and the rest. The import of the words "one" and "son," in the text of *SANC'HA* (XLIV), must be understood in the mode proposed by *JIMU'TAVA'HANA* and the rest. Or "one son," a mere instance comprehending the case of two or more sons, must be considered as an answer to this question ; ' in the case of many sons, since they each take one share, and the father takes two shares, they have a less portion; in the case of one son shall more be taken ? ' Or the mode of interpretation, proposed in the *Párijáta*, may be accurate ; ' let the chief son (for the dictionary of *AMERA* exhibits that sense of the word *éca* "one"), that is, the eldest son, take two shares,' as also directed by the text of *VRÍHASPATI* (XLV). Or the apposition may be in the form called *babubribhi*, "he, who has one son, that is, an excellent son, who earns wealth :" consequently the meaning, as deduced by implication, is, that the father shall take two shares of wealth acquired by the son, as ordained by *CA'TYAYANA*. But as for what is said, that the texts of *VRÍHASPATI* and the rest, which allot two shares to a father, relate only to wealth acquired by him, and that, in the case of property inherited from ancestors, the decision is regulated by other texts of *VRÍHASPATI* and the rest (XCIII); to which, say our opponents, its inconsistency with the text of *HARITA* (XXIII) must not be objected; on the argument, that will or pleasure, denoting arbitrary choice, cannot relate to the double share : for, since there is no certainty what is signified by the term "greater part," which denotes any number from three to 2,187,000,\* it may be considered as intending the double share. That is wrong ; for, parity with the father being stated in the text of *VRÍHASPATI* (XLV) as a cause of receiving indiscriminately two shares of property inherited from the grandfather and of

\* *Mallabah* is, an army consisting of 218,700 squads (*patti*) ; each containing one elephant, one car, three horses, and six foot soldiers ; an improper ex-*ample* in this case. T.

wealth acquired by the father himself, it is proper, that the father should have two shares of the estate however acquired. This text does not relate to a father eminent by his virtue: for brethren endued with good qualities cannot be equal to a father endued with the same good qualities; the parity must be deduced from the virtue of the brethren, and the simple relation of the father. " May divide the estate" in the text of GÓ-TAMA (XX) must be expounded 'may obtain shares.' If partition may take place even by the choice of the sons, may not a son make the partition while his father lives? No; for he is in no text described as the person, who makes the distribution. Therefore a father, induced to make a partition even by his son's election of it, shall take his own double share. Accordingly, the latter phrase, "while the father lives, if he choose to divide it," is pertinent. Consequently, if it be much against the father's inclination, partition of wealth inherited from the grandfather shall not be made; for a son is declared not to be his own master while his parents live (Book II, Ch. IV, v. XV 5). But sons, oppressed by a stepmother or the like, may apply to the king, and obtain from their father a partition of the patrimony inherited from the grandfather; not a partition of wealth acquired by the father himself, unless by his favour. This is the whole meaning of the law.

If a gift to any son be valid, why is not the allotment of a greater portion to any one son also valid? Since there is nothing in the law to prevent the investiture of property by an act of the will in favour of another, declared in this form, "let this chattel, quitting me, become his," the gift is valid; but an act of the will in regard to partition, wherein unequal distribution is designed, and which may be expressed in these words, "Let this man have this as his share in right of filiation or the like," being opposed by the law (XXVII and XXVIII), does not transfer property. Let it not be objected, that the additional words "in right of filiation or the like" are nugatory; and therefore the act of the will in regard to gift and to partition may be the same! Were it so, as a gift in favour of a stranger is valid, so would be partition; and the word sons, and similar terms, in the text of YÁJNYAWALCYA and the rest (XXVI &c), would be unmeaning. However, the gift of a man instigated by lust, wrath or the like, is not valid; as has been mentioned in the chapter on subtraction of gift.

THE period, when partition of wealth inherited from ancestors, may be made, has been also propounded by GO'TAMA (XX). " If their mother be too aged to bear more sons;" relates to the patrimony; which had descended from the grandfather; for, unless the mother be too aged to bear more sons, partition could not be made among existing sons, since it is reasonable to reserve for those, who may be hereafter born, their right to the patrimony inherited from the grandfather: and this is a mere instance comprehending the case of a father capable of connubial intercourse, but refraining from it; else the son of another wife could have no share. This is evident in the text of NA'REDA.

**XCVIII.**  
NA'REDA:—WHEN the mother is too aged to bear more sons, and all the sisters have been given away *in marriage*, and the father either refrains from pleasures, or withdraws from worldly concerns, *then shall partition be made.*\*

**XCIX.**  
VRĪHĀSPATI:—AFTER the death of both their parents, partition among brethren is ordained; and, even while their parents are living, it is proper, if the mother be too aged to bear more sons.

This text of VRĪHĀSPATI also relates to partition of property left by the grandfather. If shares have been distributed; although the mother were not too aged to bear more sons, what should follow? Has a son been born after partition, or not? In the first case, the remaining wealth, omitting what has been consumed, must be brought together; and a second distribution must be made: for sons, though born after partition, claim share of patrimo-

"is too aged to bear more sons;" may be explained as providing for the participation of a future son, there is no proof, by which it can be established to propound a distinct authority for partition. However, property, ill distributed, must be again divided.

## C.

**VRĪHASPATI:**—WHEN a partition has been made between a father and his sons by the same wife or by different wives, the sons, who may be born after the partition, shall inherit the estate of the father :

2. A son, born before it, shall have no claim on the paternal estate, *unless he reunite himself*; nor a son, born after it, on that of his brother : the duty of paying debts, and the right of giving, pledging, or selling, follow the property inherited; *so that the son, born after partition, must pay the debts of the father contracted before it.*

WHAT is the application of this text cited by RAGHUVANDANA and others, which signifies, that the son, born before partition, shall have no claim on the share reserved by the father when he divided the estate among his sons, nor on the share allotted to his brother by the same partition, nor any power to receive or discharge debts of his former coheirs? and what is the application of the following text cited by JIMUTAVAHANA and the rest? for a second partition is directed, when a son is born after the first.

## CI.

**MENU** —A son, born after a division *in the life time of his father*, shall alone inherit the patrimony, or shall have a share of it with the divided brethren, if they return and unite themselves with him.†

No , for those texts' may relate solely to property acquired by the father

\* Cited anonymously, but attr. bnd to VRĪHASPATI in a subsequent chapter T

+ Quoted partially and anonymously in this place It is cited a large in Chapter VII and VIII, where the last hemistich is other wise expounded. T

himself. The reverse should not be affirmed, that the former text (XCIX) relates to property acquired by the father, and this (CI) to wealth left by the grandfather. In the case of wealth inherited from the grandfather, should the prescribed double share, received by the father, be consumed by use, sons, born after partition, would be destitute of property ; but, in the case of his own acquired wealth, since the father may reserve the greatest part of it, they will also receive allotments out of the remainder of the fortune reserved : it is therefore proper, not to affirm the reverse of the proposed exposition. JÍMU'RAVA'HANA observes, if partition of wealth inherited from ancestors be made before the mother be too aged to bear more sons, that partition is not proper ; since sons, born afterwards, might be deprived of subsistence (Book II, Ch. IV, v. XII).\* He considers the hereditary means of support as intended by the word "subsistence" (*srītti*), which occurs in the text quoted. But others, finding the word "mother" in every text, which requires the cessation of her periodical discharges, argue, that the age of the mother is a requisite condition of a distribution proceeding from the son's choice ; and this only regards wealth inherited from the grandfather. Then, if partition of property inherited from the grandfather be undertaken by the father's choice, the age of his wife would not be a requisite condition. That may be true. Let it not be objected, that this would contradict the text quoted (Book II, Ch. IV, v. XII). The word "subsistence" (*srītti*) does not signify wealth left by the grandfather. That term is employed by excellent persons of the present day, as also signifying land, a corody or the like, even though acquired by a man himself ; and it is so used by VIJNYA'NE'SWARA. This text, therefore, has the same import with one, which has been already quoted (Book II, Ch. IV, v. XIV) : and, if sons apply to the king for partition, he must inquire, whether the mother be past child-bearing ; for, if they obtain partition on a false pretence, the rule of VIŠNU (CII) must be observed, that the brethren only shall give a share to the son born after partition, not the father, since he has committed no offence. The text, which will be quoted from YĀJĀVĀWALĀYA, bears the same sense. But if partition be made by the father's election, "a son, born before it, shall have no claim on the paternal estate, nor a son, born after it, on that of his brother," and so forth, as will be mentioned.

\* Cited in the *śāstra* of NĀGA, but scarcely quoted from another author. T.

VISHNU :—SONS, with whom the father has made a partition, shall give a share to another son, who is born after it. HENCE, while the father's right subsists, his choice alone determines the time for making a partition of his own acquired wealth ; but, in the case of property inherited from ancestors, it is also requisite, that the mother be past childbearing ; and, with this reserve, the father, or (according to another opinion), he or his son, may choose the time : partition of both sorts of property, may be made, when the father's right terminates by his demise natural or civil. These are three periods for making a partition, according to JI'MU-TAVAHANA and the rest. But VIJNYA'NE SWARA observes, " hence, while the mother is capable of bearing more sons, and the father is still attached to worldly matters, partition of wealth, which was inherited from the grandfather, may take place by the choice of his sons, even against his will." He considers the phrase, "when the mother is too aged to bear more sons," as relating to wealth acquired by the father himself.

WHEN the third measure of the text of NA'REDA (XCVIII) is read *vinashté vāpy asarane* (VI), the preceding phrase, which literally signifies "when the mother's periodical uncleanness has ceased," must be considered as denoting the impossibility of her bearing more sons. The word *asarane* is expounded, " having quitted the order of a householder." This cannot be questioned as a vain repetition of the term "having resigned"; or withdrawn from worldly concerns ; for, when a man, abiding in his own house, but devoting himself wholly to the worship of the deity, to whom he has dedicated his service, withdraws from worldly concerns, he has resigned ; but, when he enters into the fourth order, he becomes an anchorite. Either way, abdication is the sole ground, on which his property is annulled. Consequently, divesture of property happens three ways ; by degradation, by abdication or renunciation, and by natural death. But to this may be objected the case of a leper, whose property is divested in none of those modes.

A QUESTION may be here proposed for disquisition ; if a man, surviving his resignation of worldly concerns, and urged by his fate, cohabit

with his wife and beget a son, after his property has been divided among his children, what would be the consequence? It is answered, the father's property being devested by abdication, which is a *virtual* gift, and the property being vested in his sons without any effort on their part, how can a child, born afterwards, have any claim thereon, whether it be, or not, divided, since it does not belong to his father? But, in the case of partition made while the mother is capable of bearing more children, a portion must be allotted to a son born after it, under the authority of the law, for otherwise, the phrase, "if the mother be too aged to bear more children," would be nugatory. "And when all the sisters are given away *in marriage*," is added to show the necessity of bestowing them *in marriage* after the death of the father, it does not denote, says JI MU'TAVA'HANA, that partition cannot take place unless the sisters have been given away *in marriage*.

## CIII

**CATYAYANA:** — Out of property acquired by a son, the father, if he be living, shall on a division of the family receive two shares *in some cases*, or half *in others* and the mother, if the father be dead, shall take an equal share with her son.

WHAT is the import of the first hemistich in this text propounded by CATYAYANA? Does it relate to property acquired by the son, with, or without, the use of the patrimony, or to property of another sort? On this point JI MU'TAVA'HANA observes, ' of wealth acquired by a son through the use of the patrimony, the father shall have half, the son, who acquired it, two shares, and the rest, one share each but out of property acquired by a son without the use of the patrimony the father shall have two shares, the son, who acquired it, shall also have two shares, and the rest are not entitled to any participation' According to this gloss, the sense is, because the property was acquired by the son It is consequently implied, that the father receives either half or two shares of wealth acquired by his son We must not, with the northern RA'MA-CRISHNA, fall into the error of literally explaining the terms "out of property acquired by a son," considering "acquisition" (*aryana*) as an epithet

of the other part of the compound (*vitta*) "wealth or property," because the rule expresses, that 'neuter derivatives of words denoting action are similar to nouns signifying substance.' This has not the natural properties of substance. Whatever word occurs as the last term in the apposition named *shashtri tat purusha*, is considered as an accident or epithet of the preceding term (whereas, in this instance, the subject is placed last (*arjana vitta*.) But in the instance of the term "front of the body" (*púrva caya*), and similar forms of expression, the exception is founded on the special powers of the word *púrva* and the rest. Nouns of action are not of course considered as epithets, because they are similar to nouns signifying substance; nor is their similarity to such nouns admitted for that purpose. Must not the similarity of verbal nouns to words signifying substance be acknowledged, because they are not treated like those words of action, which bear the sense of conjugated verbs? This objection may be answered by asking, are you then ashamed to say, that neuter derivatives of terms signifying action are similar to those words of action, which take the inflections of nouns? Consequently, the parity of neuter derivatives, with nouns signifying substance, only authorizes their use in the dual and plural numbers. As for the notion, that action, being an assemblage of single acts, is of course numerous, and may therefore be expressed in the plural number; that is futile. Were it so, words of action, bearing the sense of the verbal inflection (*or of conjugated verbs*), would also express multitude. Grammarians do not admit the unity of acts naturally different and unconnected, such as gratifying, throwing, respecting, and so forth. Nor is it usual to say "boilings", in speaking of that action in one house, where all the operations of the work are collectively performed.

THIS is proper; for it is intended to show, that a father shall take only two shares out of property acquired by his son through the use of wealth common to all the brethren, and without employing the several property of the father.

RAGHUNANDANA.

BUT others hold, that the father shall receive for his share, half as much as he who acquired it, if the patrimony were not employed; for his son acquired

the property, and the father has *only* a claim in right of paternity : but, if the patrimony were employed, he shall receive *for his share*, out of the whole wealth, twice as much as he who acquired it ; because he has claims both as owner of the capital and as father ; the acquirer or acquirers, whether one, two, or more, shall only receive a third part. Since sons have also an interest in their father's property, half the sum is the only proper allotment ; and, that being the case, *the father ought not to receive a double share* :\* if this be alleged, the answer is in the negative ; for, although their interest in his property be admitted, they have not immediate power to dispose of it at pleasure. In such a case, ought the rest to receive a share, or not ? They may have a share, since the claim of sons on their father's estate, during his life, is admitted for this very purpose.

JI'MU'TAVA'HANA also proposes another mode of interpretation ; ' a father, who is endowed with good qualities, such as science, valour or the like, shall take half the wealth so acquired ; but, if his claim be solely grounded on paternity, he shall have two shares.' Here, nothing is expressly said in regard to the patrimony being used or not : but, as a son partakes of wealth acquired by his father, so a father is likewise entitled to partake of wealth acquired solely by his son. This is the only accurate exposition : but is it not at variance with the opinion, which maintains, that a son has no property *exclusively his own* ? Although the father be sole owner of the whole, both at the time of acquisition, and afterward ; still, when partition is made, a portion shall be allotted to the son, under the authority of the law, in right of acquisition.

BUT some expound the text, ' the father shall have a double share, because he acquired both the son and the wealth.' Consequently the sense is, ' if there be a son, the father, who acquires property, shall receive two shares :' and, when partition of his own acquired wealth is made by the father, he shall take half, or two shares, at his option. That is not consistent with the opinion of JI'MU'TAVA'HANA ; for option, considered as arbitrary choice, cannot be limited to the alternative of two shares or of half. As for the son, acquisition asserted concerning him is partial, merely asserted because a gift of a

\* An emendation is here supplied from conjecture. T.

*son* has occurred when a man gave away his whole estate. It is therefore reasonable, that, as the son partakes of wealth acquired by his father, so should the father partake of wealth acquired by his son. Consequently, since this text may be adduced to satisfy the question, what share should in that case be received by a father ? there is no good argument to support such a bad construction, *as that which had been proposed.*

THIS, however, is liable to objections. If a father have not property in his son, then only can the acquisition be partial or figurative. Now such property in a son must be acknowledged ; else, the rule of law, " both parents have power to give, to sell, or to desert, a son" (Book II, Chapter IV, v. VIII), would be unmeaning ; for gift or other alienation without property is impossible. The expression of the great teacher of logick,\* " God, to whom generated worlds truly belong," could not be pertinent, unless a father had property in his son. The *Mārcandēya purāna* and other works record the sale of his wife and son by the universal monarch HERI'SCHANDRA, to make good the sacrificial fee of the sage VIS'WAMITRA, on the performance of the royal sacrifice called *rājashyā* : and the sale of the sage S'UNAHS'EPAHĀ by his father is recorded in *Purānas* and other works. Yet, in fact, the same ownership of a wife and son, as of chattels, is not admitted ; for, were it so, sons would be owners of each other after their father's demise. Let it not be argued, that such ownership does subsist ; but, as is deduced from reasoning, vested in each over himself ; and hence a son, whose father is dead, may legally sell himself. A son would be the owner of his mother and sisters. Now sons have not dominion over their mothers ; nor shall brothers alone give away their unmarried sisters : for that would be reprehensible, while the paternal grandfather is living.

" HALF" (CIII) must here signify equable part, by the rule, which expresses, that equal parts are intended when the proportion is not specified. On the question, whether that half be one share as the moiety of two, or half of the whole, JI'MU'TĀVĀ'HANA says, ' half of the whole sum.' For, if half of two shares were implied, why not say, " or he shall receive one share in other cases"? Since the term " two shares" must have some

connexion, therefore, to satisfy the question, two shares of what? 'two shares of property acquired by a son' must be affirmed. Consequently, that being the subject of partition, it is obviously reasonable to infer 'half of that property likewise, *in other cases.*'

If the acquisition be made on his brother's stock, lawyers affirm it to be the opinion of RAGHUNANDANA, that he, who acquired the wealth, shall in this case also have a double share; for RAGHUNANDANA says, 'when the brother's stock was employed, the father shall have two shares, the acquirer two shares, and the rest one each:' and that *seems* accurate. Or, if it be RAGHUNANDANA's meaning, that the common stock was employed by him, who made the acquisition, since it would otherwise be inconsistent with the observation, 'if that horse be afterwards allotted to another, equal partition would be proper; for the acquisition is made by the exertions of the one, and by the labour of a horse belonging to the other;' what distribution shall be made, when the property is acquired by any one son through his own labour *on his brother's stock?* The answer is, the father shall in that case have two shares; and both his sons, one share each. But, if it were acquired on his brother's stock and on his own, by his own labour, the acquirer shall have two shares, the father two shares; and he, who supplied funds, shall have one: and in both cases the rest of the brethren shall be excluded from participation. Such is the method consistent with reasoning, to which the law assents.

If a man have sons, and grandsons both in the male and female line, and sons of a granddaughter, and some property be acquired by his son's son, with supplies out of his estate, what is the rule of adjustment in that case? Some argue from the letter of the phrase, "property acquired by a son" (CIII), that what is acquired by a grandson, is similar to the acquisition of a stranger. Consequently, since the funds and the person have contributed equally *to the acquisition*, half belongs to the paternal grandfather, and half to the grandson; but his uncles shall have no share, for no text ordains their participation. That half, allotted to the grandfather, is considered as property acquired by him, through the means of the wealth adventured: and hence, wealth, acquired through the employment of hereditary property

perty shall also be divided at the pleasure of the father. Is it not an unjust disparity, that a grandson, whose own father is dead, shall have a share of property, which has been acquired by the son of the common ancestor, through supplies from his father's estate; but that the uncle should have no share of wealth so acquired by a grandson, whose own father is dead? No; for there is no proof, that the grandson, whose own father is deceased, shall in this case have any share: the word "brothers" occurs in the text of VYASA (CX), and it does not follow, that a brother's son and his uncle shall share together.

THE opinion of these lawyers is not approved by RAGHUNANDANA; for in expounding the text of VYASA, he says, "brothers" are merely an instance, from which uncles and the rest should be also understood. There is equal reason, why sons, grandsons, and great grandsons in the male line shall share in the reversion of property belonging to the common ancestor: for the son of a son also belongs to his ancestor, as the slave of a slave belongs to the master; and so does the great grandson in the male line: this also is reasonable. May not the same be affirmed concerning the son of a daughter, and the rest? They are not similar, for their claim is weaker, since they confer no benefit on the ancestor while a son is living. If it be alleged, since a great grandson also, whose father is living, is disqualified for the performance of obsequies, he has not an equal claim; this argument is denied, for, when his father dies, he may have a similar claim with sons. This is affirmed, considering only natural fitness. If, therefore, property be acquired by the son of a son, through supplies from his grandfather's estate, the grandfather shall have half, the uncles and the rest a share each, and the grandson, who acquired the property, two shares: but if no supplies were received from the grandfather's estate, the uncles and the rest shall not participate. Thus may the law be concisely stated.

Must not the text, which ordains two shares (CIII), be considered as relating to wealth acquired by a son? and there is consequently no authority for the receipt of two shares by a grandfather. No; for it would be unequal, that the son of a son should partake of property acquired by the grandfather himself, but the paternal grandfather should not participate in pro-

perty acquired by his grandson. The word "son" is a mere instance of a general sense; else the same term could not be so accepted in the text of YA'J-NYAWALCYA (XXVI). If it be a maxim, that the right of succession is reciprocal, then, should a grandson, who is competent to inherit the property of his paternal grandfather, die, would not the paternal grandfather be his successor, though his father be living? and hence the word "son," in the text of YA'JNYAWALCYA (XXVI), may be taken as illustrating a general sense, from the coincidence of other texts (LXXIX); but in this instance there is no authority to support such an acceptation. Then a father would be also incapable of succeeding to property which his son acquired without employing the patrimony; for the text, ordaining a double share in certain cases (CIII), may be explained in some other manner as relating to a father deficient in virtue, *not as relating to property acquired without using the patrimony.* Is not authority wanting to restrict the text, which notices property acquired by a son; for the receipt of two shares, when partition is made, cannot be inapplicable to every case of wealth acquired by a son before partition? On this some remark, that 'the grandson and great grandson in the male line having an equal title to inherit with the son, it is reasonable, that they should be equally bound to give shares of what they themselves acquire.' But in the case of an acquisition made by the son of a daughter, should the property of the maternal grandfather have been employed, he shall take a share proportionate to the capital used, and the maternal uncles and the rest shall have no shares; but, if the acquisition were made without such use of property, the maternal grandfather shall have no share. This must be considered as the rule in the case of an acquisition made by a son or by the son of a daughter.

IT has been said, this contradicts the maxim that the right of succession is reciprocal. It cannot be argued, that the rule is not infringed, if the condition be added, in *each other's* life time. For, according to your opinion, a paternal grandfather takes a share of property belonging to his grandson, whose father is living, but this grandson does not immediately receive a share of the property belonging to his paternal grandfather.

THE paternal grandfather does not partake of the wealth acquired by his grandson,

grandson, whose own father is living, but that father alone *does participate*; for he has the chief dominion over the person, who makes the acquisition; and, since the acquisition was effected by *the use of* his funds, the paternal grandfather may take one share in proportion to the wealth *employed*, and, in this case, it is treated like property acquired by himself but afterwards, when the father makes a partition during his life-time, he shall take two shares, or half (for there is a difference of opinion on that point), because it was acquired on funds belonging to his father. If this be denied, because it were so, a grandfather, distributing property which has been acquired by a grandson with supplies from his (the grandfather's) own wealth, must give to sons more than is allotted as a due share to the grandson, who made the acquisition, but no share of such property would be given to the paternal uncles and the rest, when partition of property was made after the death of the paternal grandfather which would be unequal, since the grandson receives a share of the wealth acquired by his uncles. It is answered, the maxim may be thus stated, he, who would take a *share of* another's property, if partition were made in his life-time, shall give a share of his own property to that person if he be living.

If it be argued, *scr* a grandfather has dominion over the son of his son, as a master has over the slave of his slave, therefore he shall receive two shares or the like, *the answer is*, the shares are not in this case received in right of such dominion or ownership. *Were* it so the father would take the whole wealth acquired by his son. But they are received under the authority of the text and of the maxim *above cited*. Hence a *share of* property acquired by a grandson, or remoter descendant, whose own father is living, is not received by a grandfather. If it be alleged, that the law on this point is founded upon reason, for a father, although he have dominion over the whole property acquired by his son, gives it to his son, he must give that property, so acquired, to him, to whom he gives his own wealth, *rarely to his son* what is there contradictory in this? but, *since* labour is employed in the acquisition, a greater share is assigned by authors, as it were for the wages of that labour. On this strained refinement some lawyers ground a remark, that the ancestor shall give two shares to the acquirer *who is related to him* through the medium of his son, one share to each of the rest, and

reserve for himself two shares or the like according to circumstances. But others argue from the opinion, in which the dominion of the surviving ancestor over sons, grandsons and great grandsons is maintained, that the paternal grandfather, having dominion over his grandson through the medium of his son, shall, when he divides the heritage, take two shares or the like in proportion to the use made of his property and so forth : the father shall not take that allotment, for he does not make the partition. The whole of the remainder shall belong to the acquirer ; but, his grandfather's property having been employed, he must give two shares to the grandfather, whose claim is derived through his own son. Consequently, if the father of him, who made the acquisition, have four, and the paternal grandfather had three sons, five shares must be allotted to the father of him, who made the acquisition, and four to each of the rest; afterwards, when the father of him, who made the acquisition, divides the property in his life-time, he shall subdivide four of the shares, taking two parts as his own due, and giving one to each of his sons : but he must divide the fifth share equally with him, who made the acquisition ; for it was not acquired by himself, nor by his father or other ancestor ; and the rule directs equality where no other proportion is specified : if the acquirer die in the mean time, leaving no son or grandson, then, even though he leave a wife or distant heir, it shall be divided by the father among his sons, like property acquired by himself.\*

In partition made by a father, how shall property inherited by him from his maternal grandfather, who left no daughter or nearer heir, be distributed ? shall he take two shares or the like, as if it were property inherited from the paternal grandfather, or may he reserve a considerable part of it, as if it had been acquired by himself ? To this question some reply, that "his own acquired wealth," in the text of VISHNU (XXV), signifies that, which was gained by his own act ; but, what is received from the maternal grandfather, being gained without any exertion on the part of the father, is not acquired by his act ; he shall therefore receive two shares or the like, as suggested by the general rule. It should not be objected, that, the text only ascribing to the father and son equal dominion over property left by a paternal grandfather,

\* It is not clear, on what arguments this distribution is proposed. T.

they have not such claims in this case. Their equal dominion is a necessary consequence of considering the term, "property left by the paternal grandfather," as a mere instance of a general sense: else it would not be a rule, that the father, being son of one born blind, shall take two shares or other greater portion of property inherited from the paternal great grandfather. Nor should it be objected, that the acquisition made through his own act can only signify a gain proceeding from business appertaining to him; else what is accepted as a present, or casually found in the middle of this own house, would not be his own acquired property, and business here signifies his livelihood and so forth, as the case may be. consequently, in this case also, he may justly reserve the greatest part for himself, but he shall only receive two shares or other similar portion of property left by the paternal grandfather, since a special law prevents another distribution. The term, "property left by the paternal grandfather," must be explained property inherited in right of affinity whether it be received from the paternal great grandfather, or from the maternal grandfather, and so forth, the father and son have equal dominion over it. Nor should it be argued, that property regularly descending from ancestors is alone intended by the term "estate left by the paternal grandfather," and that any other property, whether left by a maternal grandfather or received in a present, or the like, is regulated by the law, which allows the reserve of the greatest part and so forth. There is no argument to prove, that an estate devolving from the maternal grandfather and the rest is not considered as regularly descending from ancestors: and legislators have not distinguished property devolving eventually *on collatals or on descendants in the female line.*

THAT reply is not satisfactory, for, when the heritage of one, who leaves no kinsman, devolves on a fellow student or on a learned priest, the father and son would have equal dominion. In the case, where the son of a daughter's son does not succeed to property eventually devolving *on distant heirs, by failure of the direct descent in the male line,* surely that son has no dominion if his father be dead; but, if his father be living, he is not even noticed. The very same exposition is proper in respect of the heritage devolving from the father of the paternal great grandfather, on the grandson of his grandson, for that has not regularly descended from ancestors\*. But

\* Regular descent extends only to the great grandson, on failure of him the estate devolves to the wife &c but, after some deviations, the title of succession reverts to the lineal kindred T.

the heritage of the paternal great grandfather; successively devolving on his son and the rest, until it reach the great grandson, has regularly descended; in that case, the rule of equal dominion vested in father and son must be argued: however, when a great grandson, whose father and grandfather are both dead, succeeds to the estate of his paternal great grandfather, he and his son have equal dominion. There is no objection to explain "property left by the paternal grandfather," an estate inherited in right of birth whereby the ancestor attains a region of bliss; for texts show, that a man reaches heaven by the birth of a son, of a son's son, and of the son of that grandson (CIV and XI).

CIV<sub>1</sub>

Y'A'JNYAWALCYA:—THROUGH a son, a son's son and the son of a grandson, the father or ancestor obtains *bliss in other worlds, immortality, and heaven*\*.

SOME thus explain the text quoted ; world (*lōca*), immortality (*anantya*), heaven (*diva*), are different regions of joy so named ; the region of bliss called *diva*, and the solar abode (XI), appear to be the same. But others say, world (*lōca*) intends a region of joy ; by a son, a man attains that region : by a son's son, he enjoys an endless abode there ; and by the son of that grandson, he reaches the solar abode, a region of bliss superior to the preceding : by heaven (*diva*) is signified the solar abode ; for the general term may be employed in a special sense : there is consequently no contradiction in these texts. This interpretation is unnoticed by other authors.

CV.

The *Mahâbhârata* :—This young girl, though sole, will be more estimable than a hundred, for my lord will be relieved from regret, attaining the *blissful* world through a daughter's son.

\* This is the only place where they are called directly a list of purchases, if the word were also used in this, and it is so far as I think they take care of the debts, but they do not own equally. This is not the key to the whole, but a few days ago, I have seen, the following by Mr. Moxo, not before

UNDER the admission of the text, since a daughter's son inherits in right of birth, whereby his ancestor attains heaven, he and his son may have equal dominion in this case, as if the property had been inherited from the paternal grandfather. If this be alleged, the answer is, the term must be explained, according to the opinion of VIJNYA'NE'SWARA, property inherited in right of birth unattended by any other *requisite* cause. By birth alone property vests in sons and the rest; but it vests in a daughter's son and others by birth upon failure of sons and the rest. According to other opinions also, it signifies property inherited in right of birth independent of the general failure of sons and other *near* heirs. Whence is all this deduced? From plain reasoning: since the term "paternal grandfather" must comprehend the paternal great grandfather, and must exclude the maternal grandfather, this interpretation alone is admissible.

BUT others hold, that what is gained through no affinity or relation, is acquired by the party himself; what is gained through some affinity or relation, is comprehended under the term 'left by the grandfather': in the case of a heritage devolving on a learned priest or a fellow student, there is no objection to admit the equal dominion of father and son. Or what is gained in right of birth, may alone be denoted by "property left by the grandfather:" else, should the father, through avarice or other motive, abandon the paternal estate and occupy the abode of his maternal grandfather after the decease of that ancestor, the son, born after partition made by that father, when the estate is reduced by consumption, might be destitute of a maintenance. If it be asked, 'is not this remark equally applicable whether he have no property inherited from the paternal, or from the maternal, ancestor, but only property acquired by himself?' and if the objection, 'that the father has wilfully deprived his son of a maintenance, (since he abandoned his patrimony, coveting the wealth of his maternal grandfather, and since that patrimony has not been received by his son; and therefore the cases are dissimilar;) be repelled, because the grandson or other descendant might, if he pleased, take his share of the patrimony, under the authority of the subjoined text, "Of wealth inherited from ancestors, even though not taken by the father, partition again extends to the fourth in descent; this is a settled rule;" and if it be inferred, 'that the father is guilty of the

sin arising from the defalcation of his son's maintenance, if he neglect, give away, or otherwise *alard* n, the estate of his own father,' they answer, the absolute defect of property inherited from a father or paternal ancestor, and the divesture, by partition, of property which has been inherited from a maternal ancestor, are not similar. Their opinion is liable to objection.

An observation should be here made. The participation of a son's son, whose father is dead, and of the son's grandson, whose father and grandfather are both deceased, is ordained by the texts of CA'TYĀYĀNA (LXXIX), when partition is made by a father. Hence partition by a grandfather, or great grandfather, is surely valid and, if the common ancestor have no surviving son, but have a son's son, or a son of a grandson, partition may be made for his sake by the grandfather, or great grandfather. It should not be objected, that, as a share is ordained for the wife, when partition is made for the sake of the son, so it is directed, that shares shall be given to grandsons and the rest and consequently partition shall not be made for their sake, because sons alone are mentioned in the text of YĀJNYAWALCYA (XXVI), and because the texts of CA'TYĀYĀNA may be solely applicable to such cases. Since a son, a son's son, and the son of that grandson, equally benefit the ancestor, contributing by their birth to his attainment of heaven, there is no argument, on which a disparity can be established but no share is allotted by any text, to the wife independent of the son, and it is therefore fit to establish such an inference. A partition, made by a maternal ancestor in favour of a daughter's son and the rest, is not legal but, if any one make such a partition, in consequence of observing the practice of distributions made by fathers, it is valid, provided all parties consent; but not otherwise. This brief statement of the law may suffice.

### CVI.

YĀJNYAWALCYA, after premising partition by a father.—One, who is able to earn a living and claims not a share of the joint-property, may be disunited from the family, on giving him some trifle as a consideration to prevent future strife; or the portion of an eldest son may be allotted to the first born: or all the sons may have equal shares.

THE text is introduced in the *Retnácarā* with this remark; ‘the legislator also propounds an exception to these two cases.’ Consequently, to a malevolent and indolent son, who is able, *but will not work*, a small portion, merely for the means of subsistence, shall be allotted, not a better portion *than the rest*, nor even an equal share, if his indolence be not authorized by the father: and this takes effect, even against the will of the parent; for it is ordained by the law. However, this maxim concerns property acquired by the sons, not that, which has been acquired by the father or ancestor. The author of the *Pracásā* expounds the text, ‘giving some trifles of small value, to prevent future strife with his sons, disunion of religious ceremonies, or partition, may be made.’ BHĀVĀDE’VA, the *Mitágharā*, and the rest, furnish the same exposition. The term (*anibamána*), which is explained *malevolent* in the preceding comment, more properly signifies not wanting the wealth of his father. How shall he find means of subsistence without partaking of the patrimony? therefore does the legislator add, “who is able;” that is, able to earn a livelihood without receiving a share of the patrimony. The context suggests this sense. The sons of this coheir might dispute the equity of the partition, if their father had been disunited from the family, with a trifling given to him; but, according to this last opinion, in which the verb *śb* is taken in its sense of ‘strive,’ if future contests be prevented by his voluntary acceptance of an inferior share, it is also prevented by his voluntary renunciation of his own right. This is liable to objection; for a fine to the king is denounced (CCCLXXVIII) against him, who voluntarily accepts an inferior share and afterwards disputes the partition, not against him, who voluntarily renounces his share and afterwards revives his claim. The last opinion must be therefore admitted, taking the text in its literal sense (*that some trifles must be given by way of share to prevent future strife*): and in this case of partition by a father, should he give no share to any one son labouring under no legal disqualification, such as expulsion from his class or the like, it must be remembered, that such partition is expressly declared invalid. This text must be also adduced in the case of partition made after the death of the father, for no other text has been delivered by YĀJÑYAWALCYA; and the rule is propounded generally by MĀNU.

## CVII.

**MENU:**—IF any one of the brethren has a competence from his own occupation, and wants not the property *of his father*, he may debar himself from his own share, some trifle being given him as a consideration, *to prevent future strife*.

THE text is thus expounded in the *Pracása*; should any one of undivided brothers, through laziness or knavery, make no exertion for gain, that is, strive not to improve the former stock nor to acquire other wealth by agriculture or the like, he may be debarred from his share, or in other words excluded from participation in the wealth acquired by the rest of the brethren. But there is nothing to prevent his receiving a share of the original stock. Hence that shall be received by him. However, the legislator directs, that a trifle shall be given him for his maintenance: and that trifle shall be allotted out of the property acquired by his brothers. This allotment is founded on the near connexion between the wealth formerly possessed and that now acquired. But his not receiving a share proportionate to the whole estate is, the consequence of his knavery. From the expression, "able" or competent, it follows, that one, who is unable to assist the common exertion for gain, shall receive a share proportionate to the whole estate. **HELA'YUDHA** expounds the text as follows; to him, who takes not his own share, a trifle must be given to prevent future strife with his sons, and partition may then be made. The text of **MENU** is cited in the *Retnácarā* with this remark, 'the legislator declares the same.' **JI'MU'TAVA'HANA**, **RAGHUNANDANA** and others concur in the same exposition; but they explain 'giving him some trifle for his maintenance,' giving him a handful of rice or the like. The meaning is, he, who is able to subsist by his own occupation, and accepts not a share of the joint estate, but on the contrary renounces his own right, must be supplied, when necessary, by his brothers, out of the shares they have severally received. The text of **NA'REDA** bears the same import, says **HELA'YUDHA** quoted by **MISRA**.

## CVIII.

**NA'REDA:**—HE, who, being employed in the affairs of the family, performs their business, receiving no share in the original partition, shall be supplied by his brethren with food, raiment

raiment and beasts of burden, to complete for him his full share.

THE commentator's meaning is this ; if any one of the brethren, generously declining to receive his share when partition is made, afterwards claim it, the property shall not be thrown together, for the purpose of making a new partition on his account ; but his share shall be made up by the rest of the brethren, contributing severally and proportionally a part of theirs : in this manner shall his share be allotted to him. Consequently, from the ambiguity of the phrase, the import of these texts should be applied to all *these different cases*. The author of the *Pracása*, and MISRA, think the right of filiation and the like so indefeasible that, if a share be not received when partition is made, it may be of course obtained by the party himself, or his son, choosing to claim it at a subsequent time. The opinion, delivered in the *Retnácarā*, shall be hereafter elucidated.

ONE, being employed for the benefit of his family and relations, performs their business, or work adapted to provide their subsistence, and takes not his share of the patrimony ; if he subsequently claim his allotment, he shall be supplied with food, apparel, beasts of burden (mentioned merely by way of illustration), and other things, such as grain, silver, gold, ornaments and the like ; and a full share shall be thus allotted to him. The text is so explained by MISRA and the rest. But the author of the *Retnácarā* considers the expression, "employed in the affairs of the family," as intending a brother eminent by his good qualities. For instance ; being employed in providing for the maintenance of his brethren, their families, and his own, he performs that business ; he conducts agriculture, or transacts purchase and sale or the like ; he shall therefore be advanced by the rest of the brethren, who perform not such work : consequently, on account of his virtue in exerting himself for the maintenance of the family, a superior allotment of food, clothes, beasts of burden and the like shall be given to him. JI'MU'TAVA'HANA and others concur in this exposition. As a better allotment of food, clothes and the like shall be given to him, who labours for the support of the united family, so a worse allotment shall be given to that brother, who does not make any exertion to support it, though able to do so : and,

partition is made, a greater or better share must be given to him, by whose exertions the members of the family live ; and he, who is able but does not labour for their support, shall be disunited from the family, giving him a maintenance only, as directed by MENU (CVII). The same rule is applicable to the case of partition made by a father. Such is the opinion delivered in the *Retnacara*. and this we hold reasonable; for VYĀSA praises them, who make exertions for the befoof of others.

## CIX.

VYĀSA :—USEFUL is the life of him, by whom, while he survives, priests, and kinsmen subsist. Who is there, that does not live for his own benefit?

PARTITION with sons begotten on a wife by an appointed kinsman, and other adopted sons, will be considered under the title of partition after the death of the father. If an acquisition be made through the co-operation of all the brethren with their father, an unequal distribution should not be made in consideration of filial piety, of a large family to maintain, and the like, nor in right of seniority and so forth; as has been already noticed. Here a question occurs for discussion: if there be four brothers, the father of whom is living, and who are all skilled in their duties; but one acquires a piece of land, acting under his father's instructions; what form of distribution shall in this case be followed? Does that land belong to him alone, because he made the acquisition? or is the acquisition considered as made by the father, because he partly contributed to it; and shall all the brethren therefore partake of it? In reply to this question it is asked, was this land or other property purchased, or received as a present, or otherwise acquired? Either the purchase was made with the father's sanction on a reference to him in words to the following effect, at the time when the bargain was proposed, "this man offers to sell me this property; what should be done?" or else, the purchase or other acquisition was made by the son, receiving express orders from his father to effect it. In the first case, the price being paid out of his own several property; or in the case of a present received, which was not intended for the father, the donor not having said, "deliver this to thy father;" the land so purchased or received is the sole property of the son. In the second case, it belongs to the father:

father : but, if the price were paid out of the son's own several property, and he merely termed it the act of his father, through the ingenuousness of his disposition, the son shall have a share ; and it shall be proportionate to the wealth invested. But the personal labour of the son belongs to the father ; for the son is his representative and subject to his power (Book II, Chapter IV, v. VIII). Let it not be argued, that the son can have no several property, since his father is owner even of that, which is acquired by him (Book III, Chapter I, v. LII) ; how then should he have a share of the acquisition ? That text is considered by JI'MU'TAVA'HANA and the rest, as merely intending, that a son, whose father is living, is not his own master even in respect of his own acquired wealth. For, if sons and the rest have not property in that, which they earn, there could not be an acquisition made by them ; since acquisition signifies such an act, as becomes a cause of property *vested in the agent*. Else, the father having property in that, which was acquired by his son during his lifetime without using the patrimony, all the brethren would have equal shares after his demise. It would follow, that sons and the rest would lose all religious rites, which must be defrayed with money ; since the father's property would be revived in that, which he himself gave to his sons. Consequently the sacrifice with the moon-plant could not have been accomplished, as recorded in the *Mabábhárata*, by BHU'RIS'RAVA during the life of VA'HLICA, nor other ceremonies by other persons during the life of their father. VA'CHESPATI BHATTA'CHARYA concurs in this opinion, and, in the text of CA'TYA'YANA (Book I, v. VIII) which forbids the lending of money to women and the rest, their inability to acquire wealth is the motive of the precept ; accordingly children or minors, not sons, are there mentioned.

BUT others argue from the text, which expressly declares the right of a father and the rest to wealth acquired by a son *and others* (Book III, Chapter I, v. LII), and from the maxim 'what is clear shall not be explained by inductions from other premises,' that a father and the rest have ownership : a right, proceeding from acquisition, *first vests in the sons* ; afterwards, property also vests in the father by reason of the son's right, which is subservient to the father's. But the ownership of the

son is not divested; for a text declares property common to the married couple; and there is no inconsistency in the contemporary property of father and son, any more than in the property of a wife, while her husband lives. The absolute right, and independent power, of a wife over that which is given to her by her husband, and of a son, over that which is given to him by his father, must be established; for texts declare the several property of women; and it must be inferred in other cases, from parity of reasoning, since the religious ceremonies of sons and the rest must be defrayed. After the death of the father, another coheir shall receive a share of such property; as appears from the expression, "with supplies from the common estate," in the text of VYASA (CX); for that may relate to an acquisition made while the father was living, as well as to one made after his decease.

## CX.

VYASA:—If a coheir gain horses, elephants, cars, or weapons of any sort, by his own valour, or the like, but with supplies from the common estate, his brethren; or paternal uncles, shall be sharers of it:

2. A double sum is ordained for him; and the other partners must share alike.

As a son has a share of wealth acquired by a father, so shall a father partake of wealth acquired by his son. Even according to your opinion, the independent power of a son, after partition, over his whole property, as intimated by CA' TYA' YANA (CIII), must be acknowledged upon arguments obvious to common sense. The word "son," in that text, must signify one with whom partition has not been made. Or the son's title causing property to vest in the father, is again revived in regard to wealth given to him by his father. On this point no difference of opinion appears in the *Retractions* and other works: for it is said in the *Retractions*, in the chapter on the emancipation of slaves, 'the master has no power over property given by him, through favour, to his slave'; and the texts of Mînu and others (Book III, Chap. I, v. LII 2 and LIII 2) are cited

cited to show the reverse in other cases. MISRA concurs in that exposition. Since the ownership of a wife in that kind of wealth, which is called the property of women, is propounded by a special text, her husband alone is owner of every other kind of property. The prohibition of lending any thing to women and the rest, as promulgated by CA'TYAYANA under the title of loans (Book I, v. VIII), is founded on their want of property. However "infant," there denotes a child, whose father is deceased : it is merely an instance, comprehending a son, whose father is living ; as has been already mentioned. They thus expound the law.

A FATHER has property in his son, as in grain or the like, because he begot that son. A husband has property in his wife, as the receiver of a present has in grain, cattle or the like, because she was given to him by the person who begot her. A master has property in his slave in right of purchase or the like. Hence, under the rule, that 'whatever is acquired by a man himself, belongs to him,' a father has property in that, which is acquired by his son and so forth. But, in the case of female property received through favour, and so forth, a stranger may have full dominion over it, with the assent of the woman's husband. Yet in the case of female property given by the woman's father, we do not, they say, suppose a right different from that which is established by the law.

If it be asked by way of objection, how can the debts be paid, when partition has been made during the life of the father ? the answer is, they, who enjoy shares, must discharge the debts. Here a question occurs for discussion. The father has two shares of property left by the paternal grandfather, and the sons have one share each ; the father shall therefore sustain two parts of the debt, and the sons one part each : this is indisputable in the case of a debt contracted by the father, but may be disputed in the case of a debt incurred by the paternal grandfather ; for the payment by the son is productive of no benefit to him, and payment by the father alone is beneficial.

## CXL.

NA'REDA :—WHAT remains of the paternal estate, out of which

which the debts of the father have been paid to those, to whom payment had been promised by *him* shall be divided among the brothers; care being taken, that the father continue not a debtor.

Let it not be argued, that, because this text shows it necessary to pay the debts of the father, when partition is made among brothers after his death, surely his debts must be paid, when partition is made in his life-time: and since it appears from the term "successively due," in the text of NA'REDA, which has been cited under the title of loans (Book I, v. CXCVIII), that the debt of the grandfather first devolves on the father, and afterwards on the son; and since it must necessarily be paid by the grandson, being due by his father, the grandsons shall therefore contribute one share without interest (Book I, v. CLXVII 2), and the son of the original debtor two shares with interest. From the form of the phrase, "out of which the debts have been paid," it appears, that they must be paid previous to partition. Now they cannot be then paid by the grandson; for as yet he has no property, and he is not the person, who makes the distribution: it is therefore proper, that the son should make the partition after first discharging the debts with interest. Again; when partition is made by a father, a share is allotted to the grandson, whose own father is dead; but, since the law does not make him liable for the debt of his paternal great grandfather as well as for that of his father, it shall not be discharged by him. But the father must likewise discharge the debt of his grandfather; for it ought to have been paid, in the first instance, by the grandfather. But, if he be then unable to discharge it, or the term be yet incomplete, let him require from his sons and grandsons an immediate promise of payment: the debt of a paternal great grandfather or remoter ancestor must be *subsequently* discharged in consequence of such promise. In like manner a promise of paying interest on the debt of the paternal grandfather should be required. But, if there be no property left by the paternal grandfather, and only property acquired by the father, then, should the father, making a partition, reserve the greatest part for himself and give an inconsiderable allotment to his sons, how shall the debts of the father and grandfather be apportioned? If he divide the estate at his pleasure, then,

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should the father reserve the greatest part of his fortune burdened with a small part of the debts, his sons will be distressed, or, if he distributes his fortune like property inherited from the grandfather, still the sons will be distressed. Therefore the matter must be thus reconciled—the father spontaneously discharging the whole debt, may distribute the remainder among his sons at his pleasure. But, if the debts exceed the property, let him give some wealth to the sons, and assess the debts in proportion thereto. However, sons should, without evasion, voluntarily bear their father's burden. But, if the father fraudulently or truly say, "my debts exceed my estate, how then should I give shares to my sons?" and his sons reply, "give us shares of the estate, burdened with proportionate shares of the debts," there is no law to authorize the independence of sons; however, the matter should be adjusted by the impartial decision of arbitrators. This is founded on the reason of the law. If there be property of both kinds, acquired by the father, and inherited from the grandfather, and also debts of both sorts, then the debts, incurred by the father or grandfather, shall be distributed in the same proportions with the property—the fortune of the father, and the debts with which it is burdened, shall be treated as the estate of the father, the wealth left by the grandfather, and the debts charged thereon shall be treated as the estate of the grandfather. This has been sufficiently discussed.

How can partition, made during the life of the father, be called inheritance (*dagabbaga*)? When inheritance is explained 'the heritage which is shared' the portion given by a father in his life-time being received in right of affinity, and heritage signifying wealth held as property in right of affinity after the property of the former owner has expired, and that being here connected with partition, the description is unexceptionable. According to the opinion, in which inheritance is explained partition of heritage, since it only becomes heritage by the act of partition, heritage is here a subject effected by action, "as in the example, 'he makes a pot'." But according to the opinion, in which inheritance is explained participation or

\* Subject, in philosophical grammar is of three kinds  
*prapya* an efft & produced by conjunction disjunction and the like, without altering the form of the substance ex g visits the city

*varya* where the substance remains but its form is changed ex g makes a bracelet of gold  
*nirvaritya*, when an efft is produced by action, where the form changes or is substituted ex g makes a pot, or a carpet T

which the debts of the father have been paid to those, to whom payment had been promised by *him* shall be divided among the brothers; care being taken, that the father continue not a debtor.

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How can partition, made during the life of the father, be called inheritance (*dāyabbīga*) ? When inheritance is explained 'the heritage which is shared' the portion given by a father in his life-time being received in right of affinity, and heritage signifying wealth held as property in right of affinity after the property of the former owner has expired, and that being here connected with partition, the description is unexceptionable. According to the opinion, in which inheritance is explained partition of heritage, since it only becomes heritage by the act of partition, heritage is here a subject effected by action, \* as in the example, "he makes a pot." But according to the opinion, in which inheritance is explained participation or

\* Subject, in philosophical grammar, is of three kinds, *grāhya*, an effect produced by conjunction, disjunction, and the like, *ambhastā* among the forms of the substance; ex. g. visits the city *vicīya*, where the substance remains, but its form is changed. ex. g. makes a bracelet of gold. *śreyasya*, when an effect is produced by action, where the former shape of the substance is not considered; ex. g. makes a pot, or a carpet. T.

ownership of heritage, ownership being fully vested in sons and the rest after partition, the wealth is heritage; inheritance, consisting in ownership predicated of them, may be predicated of *beirs* as far as the fourth in descent. This has been sufficiently explained.

## CHAPTER III.

## ON PARTITION AMONG BROTHERS.

AFTER the natural or civil death of the father, either let the sons live together, or let them divide the paternal estate. This alternative is propounded by MENU (XVIII). Let the eldest son, in the mode abovementioned (Ch. I, Sect. I), undertake his father's charge and support all the brethren, and let them thus live together; or let them live apart: and that living apart is adopted for the sake of religious duties; for, by the performance of all rites, constant, occasional, and the rest, out of several property, the consequent merit is separate and shared by no other. A separation of abodes is therefore morally right, not caused merely by the perverseness of coheirs. May not coparceners severally perform religious rites? No; for it is a certain rule, that the intention of the law is fulfilled by once performing a single religious rite, which is defrayed out of the common property. Since it does not repeatedly occur, it is customary to perform it once only: and the sons of a king, not being separately consecrated to the regal office, unless partition be made, are not entitled to perform the sacrifice called *Rājasūya* and the like, which must be done by a monarch. As for the duty of voluntary gifts and so forth, religious offices may be multiplied, even without partition, by the repeated performance of that duty; but constant and occasional rites are fully performed by a single celebration, as has been already mentioned. Still however, in some circumstances, as in that of the *putriffti* sacrifice for the sake of obtaining offspring, religious rites are multiplied by the separate performance of religious ceremonies without partition.

This partition should be made with mutual kindness, censured in the *Herrivāda*.

## CXII

The *Herwanśa*.—No doubt, INDRA<sup>1</sup> the mutual strife of brothers and of friends gladdens their enemies.

IT is requisite, that the mother be also dead, before partition can be made by brothers after the decease of their father

## CXIII

VYASA.—FOR brothers a common abode is ordained so long as both their parents live, but, by making a partition after the death of their parents, their religious duties are multiplied.

If it be argued, that, because brothers are enjoined to live together while their father and mother both survive, partition is suggested when one of them, namely the father, dies, that is denied for it is a rule, that what occurs first or last in the apposition called *dwandwā*, is accepted, each is meant. The mother and father are both suggested by the word "parents" (*pitrau*), a term formed by the omission of one word (*matri*), which is understood in this expression, and each of the terms suggested relate to the word "live" the phrase is therefore explained, "so long as the mother lives, and so long as the father survives." Else partition would be directed by this text, when the mother alone was dead. The text of YAJÑAWALCYA must be explained as signifying, that partition may be made after the death of both parents, since it has the same import with the text of VYASA.

## CXIV

YAJÑAWALCYA:—LET the sons, after the death of their parents, equally share the assets, and equally pay the debts of the deceased.

LET it not be argued, that, on the contrary, sons are enjoined to live together while both their parents survive, but may divide the estate when either of them dies. SĀNC'HA expressly declares, that partition cannot be made while either of them survives (XVII)

CXV.

VRĪHASPATI:—ON failure of both their parents, partition among brothers is ordained.

THAT is, on failure of their father and of their mother. The sense is the same in the text of VYĀSA. While the father lives, let no partition be made, because sons have not power over his effects; but why should not partition of the paternal estate be made while the mother lives? To this some lawyers, adopting the opinion of JIMUTAVAHANA, reply; ‘partition of the paternal estate, while the mother lives, is not morally right.’ Consequently the prohibition against dividing the patrimony while the mother lives is a *moral precept* like that against eating flesh-meat on the eighth day of the lunar month and so forth. Hence the sin of infringing a prohibition is the consequence of making such a partition. Or an exception is suggested by this text: it is not morally right; that is, it does not multiply separate religious duties: they are not separately multiplied while the mother lives. Consequently the sense of the text (XVII) is deduced from what has preceded: sons are not independent, that is, they are not entitled to make a partition and so forth; they are not independent while their relation to a surviving mother subsists. Such a partition is invalid in respect of religious duties, and is only valid in respect of property. Hence, while the mother lives, all participate in every religious rite, even though separately performed. Accordingly, as partition is made while the father lives with his consent, so, reasoning from analogy, while the mother survives partition must be made with her consent. But, in the one case, since the father has dominion over the estate and over his sons, he shall have a double share; in the other case, since the mother has dominion over the son alone, she shall have one share only: and hence, the father shall have more than a double share of his own acquired wealth; but property, acquired by the mother, shall not be divided, since the law does not ordain a partition of it. The text of CĀTYĀYANA (Book II, Chap. IV, v. XV 5) shows, that sons are not their own masters, while their mother lives. Consequently, after the death of the father, two periods occur for partition, when the mother dies, or, *while living*, when she consents. But, while the father lives, since he has dominion over all, parti-

tion shall be made by his choice alone; the mother's assent is not required: and those, who contend for partition of property inherited from the paternal grandfather, at the option of the sons, think, that partition is made by the choice of the father alone, who is induced thereto by the wish or request of his sons; for the father is the person, who makes the distribution; the text of HA'RITA\* denies partition without the father's consent; and sons have not immediately such independent power, as can enable them to perfect the act of partition without reference to another person. Accordingly the mother's assent is not required for partition by a father.

But some lawyers argue, from the text, which declares property common to the married couple (CCCCXV), that the mother's property, thereby proved, subsists after the father's death, since there is no argument to prove the divesture of the mother's property, although the father's be annulled by his demise; consequently sons cannot divide property, which is held in common with their mother, without her consent. It should not be objected, that partition may be made with the consent of any one owner, even without the acquiescence of the mother, as it may without the consent of a brother. The mother having dominion over the estate and over her son, but he having dominion over the estate only, she has greater authority. But the same observation is not applicable to an elder brother; for he is not highly venerable like a mother. However, it is not customary to make a distribution, by which the eldest brother would be aggrieved; or, if partition be made, the portion of an elder son is allotted to him, as a token of respect. Is it not declared in a text cited by RAGHUNANDANA and VA'CHESPATI BHATTACHARYA (Book II, Ch. IV, v. XV 1), that the younger brothers are not their own masters, while the eldest brother lives; and partition cannot therefore be made, without his consent? It cannot be argued, that the text, which has been quoted, is intended to forbid a gift or alienation by others, while there is an eldest son standing in the place of the father, as directed by MENU (IX); for there is no argument, on which the text can be restricted to that limited sense. To the question proposed, the answer is, no; for the text which has been quoted must of course be explained as relating to an eldest brother, who bears the burden of supporting the family,

\* The text, which is here quoted, has been attributed to SAMEERA (v. XVII)

since the law propounded by NA'KEDA (XVI) suggests partition among brothers, who are unwilling to live together; and the living together or separately appears from the text of MENU (XVIII), and from many other laws, to be the act of all; and since the eldest has no dominion over his younger brothers. The expression, "seniority is founded on virtue or on age" (Book II, Chap. IV, v. XVI), is not inconsistent with the phrase, "or even the youngest brother if he be capable of business" (XVI).

VA'CHESPATI BHATTA'CHARYA and many other authors do not concede to this opinion; for they do not acknowledge the wife's property in her husband's estate, since she made not the acquisition. But ultimately there is no variance. No ordinance exists to prove, that partition shall not be made by grandsons, while the wife of their paternal grandfather survives. But some lawyers infer, that sons are not independent in respect of their mother's property, while she lives, but do not think them dependent in regard to property left by the father: as sons have an interest in, but no independent power over, wealth acquired by their father, while he lives, so have they none over wealth acquired by their mother, so long as she survives. These lawyers, though they copy VIJNYA'NE'SWARA, are not now followed. This point has been sufficiently explained.

VR̄IHASPATI has propounded two forms of partition, with, and without, a deducted allotment (XXX). That has been already expounded: however, the expression, "with attention to priority of birth," is there a mere instance of a general sense, whereby the greater share of one, who is preeminent by his good qualities or the like, is also suggested, as already mentioned.

## CXVI.

VR̄IHASPATI:— ALL the sons shall succeed to their father's estate, as is ordained; but he, who is distinguished by science and good conduct, shall take a greater share than the rest:

2. Progenitors become truly the parents of a son, through him,

him, whose fame is spread in this world, for science, skill in arts, courage, or wealth, and for knowledge, liberality and virtuous actions.

" SCIENCE ;" study of the *Vedas* and other branches of sacred literature : and that is peculiar to the three *first* classes, the *Brahmana* and the rest. " Skill in arts ;" knowledge of mechanical trades ; and that is peculiar to the fourth tribe and to mixed classes. " Courage ;" valour : this appertains to the military class. " Wealth ;" riches : this alludes to the commercial tribe, not to the sacrificing priest, or to the *Sudra* ; for riches are censured *as a pursuit* of these classes. " Knowledge ;" the knowledge of God : this may belong to men of all classes, by the power of destiny. " Liberality ;" the meaning is obvious : it may relate to men of all classes. " Virtuous actions ;" such as are followed by purity : or (reading *crayeśhu* instead of *criyāśu*) the purchase of commodities for traffick ; meaning also the sale of them ; and this appertains to the commercial tribe. By the connective particle, other duties enjoined to the several classes are comprehended in the text. " Progenitors become truly the parents of a son, through him &c ;" it is therefore proper, that a most excellent share should be allotted to him.

WEALTH is incidentally mentioned in this text ; or it is intended to show, that a superior share shall be allotted to one, who is able to acquire riches. " Father of a son ;" the word from its etymology \* signifies related to an excellent son.

WHEN partition is made among sons, an equal share must be allotted to the mother with her sons, and to the wives of the paternal grandfather with their grandsons : as has been already mentioned. But in the case of a *Sudra*, it will be declared, that no deducted allotment shall be given to the *firstborn*.

RAGHUNANDANA.

THIS is grounded on the text of MENU (LXVI). It may be objected,

\* The etymology is thus stated in the text; *Patrin*=*patra*, son, + *iv*, bearing the same sense with *maśi* (or *masi*), a termination denoting excellence,

that,

that, if the deducted allotment, being included in the shares, render them unequal, this would contradict the observation of JIMUTAVAHANA and others, in expounding the text of MENU (XXIX), that 'unequal partition on account of filial piety or the like is forbidden, not the deducted allotment, which is no share.' But VACHESPATI-BHATTA'CHARYA holds, that 'the deduction in favour of the eldest by birth is denied to the servile class, not the deduction in favour of one, who is preeminent by his good qualities.' The text will be otherwise expounded under the title of partition among sons by women of the four classes. The case of him, who, through laziness or the like, refuses to labour for the support of the family, or of one, who, being very able to earn a livelihood, supports his own family without using the paternal estate, has been already considered.

THE texts of CATYAYANA (LXXIX 1 and 2) have been explained in the preceding chapter. The first verse relates to partition made by the father. The second expresses, that a nephew, whose own father is dead, shall receive a share from his paternal uncle. The condition, "provided he had received no fortune from his grandfather," must be extended to this case. Consequently, if the grandsons, having received allotments from the paternal grandfather in his life-time, reside apart, and their uncles remain united with their own father, in that case, when these make a second partition, the grandsons shall receive no share. However, grandsons are entitled to obtain partition of that property, which had belonged to their paternal grandfather; but the fortune, previously allotted to them, bars a second partition of the same estate. The text of YAJNYAWALCYA (LXXVIII) has the same import with the last hemistich of the second verse, and the third (LXXIX 3) relates to the same subject.

THE text of DEVALA (LXXXI) is thus explained in the *Retnacara*: 'partition among undivided partners, and a second partition among divided relatives living together after reunion, extends to the brother, to his son, and to the son of that son ; it stops with the son of that grandson, being fourth in descent from the common ancestor' "Fourth," counted from the owner of the estate *relatively*, is preceded by the inseparable particle *at* (or *ā*), which denotes 'limit of space or time.' Consequently, if brethren live together

gether after the death of their father, a brother shall receive a share when partition is subsequently made; or should one of the brothers die before his father, his son shall take his share; should he also die before his grandfather, his son shall receive the share: and if this last also be dead, his son shall not take the allotment; for he is more remote than the fourth in descent. This rule is applicable where partition had not been made; and "second" does not relate to this case. Again; two brothers have reunited themselves; afterwards their sons, grandsons, and great grandsons die: in that case the son of the great grandson shall not take a share. In the gloss of the *Retnácarā*, it is said, 'extends to the brother, to his son &c.' brother denotes the son of the reunited heir, or son of the uncle; for it is there remarked on the text of *De'VALA* (LXXXII), that 'it is applicable, when, partition not having been made, property, not enjoyed by one coheir, is solely enjoyed by another residing in the same province.' For the brothers are separated; but some property, remaining undivided, is successively enjoyed by one brother, and by his son and other descendants, and is not enjoyed by the other, nor by his son and descendants: afterwards, when partition is claimed, a considerable lapse of time intervening, this text regulates the decision. Consequently, if it be claimed by the brother, by his son, by the son of that son, or by the son of this grandson, partition shall take place; but, if it be claimed by the son of that great grandson, partition shall not be made. However, property vests in the occupant, because the right of the other is annulled by adverse possession: accordingly the text is pertinent; "Except on failure of kinsmen allied by the funeral cake, the claim of kinsmen allied by family only is not valid." Here affinity by the funeral cake is referred to the owner of the property; consequently it is not extended to the fifth in descent: and this rule is applicable when the party resided in the same province; but, if he resided in a foreign country, property is only devested by usucaption, after the seventh generation, as will be mentioned.

But some expound the text of *De'VALA* (LXXXI), 'among undivided partners (meaning heirs, who are reunited, and those, between whom partition has not taken place), and among divided relatives (or those, between whom partition has been made), who live together, that is, in the same country, a second distribution, or partition made after reunion, and a division of property remaining in parcenary when the first distribution was made, and solely enjoyed by one

one heir, extends to the fourth in descent but, if they do not live together, that is, in the same country, it extends to the seventh generation, as will be mentioned' They expound the subsequent text (LXXXII), 'so far, that is, as far as the fourth in descent, relatives, or persons sprung from the same family, are *sapindas*, or connected by the mutual relation of giving and receiving the funeral cake. Beyond him, namely the fourth in descent, the funeral oblation is rescinded, the relation by the funeral cake is cut off. What follows from these premises? The legislator adds, sages admit, that succession follows the funeral oblation, if there be a connexion by the funeral cake, participation in hereditable property is acknowledged; that is, inheritance takes effect, if there be such a connexion. This is the sole purport of the phrase' Is it not superfluous to say, because property is vested in the occupant, the fifth in descent shall not partake of the heritage, for he of course is not entitled to inherit, since the right of the fourth alone is propounded? It should not be argued, that the text concerns the case, where the deaths happen regularly, the owner dying first, and his son afterward. Were it so, "undivided" would be a superfluous term, for, in the case of undivided coheirs, should successive persons die regularly, (the son after the father), participation may extend even to the hundredth generation. It is not ordained, that partition among the descendants of partners in commerce shall not extend to the fifth or remoter descendant. To the question proposed, it is answered, in the expression "divided heirs," the regular decease of the father before the son is supposed, but in the phrase "undivided partners," the premature death of sons before their fathers is supposed. Or this law may not relate to reunion, for the text of BAUDHA'YANA (III) establishes the succession of the sons of a reunited heir, and since they are not divided, it is also proved by this circumstance. Consequently, by mentioning partition, property is declared. For instance, the great grandson of an undivided coheir shall share with the brother of his paternal great grandfather, that is, any property, which had remained in common, shall be shared by the great grandson of a divided heir. This coincides with the text of CA'TRA'YANA.'

But others expound the text, 'among undivided partners, and among divided heirs living together after reunion, partition extends to the great grandson'

' son of the owner Or, among heirs undivided from the day of their birth, or living together reunited after a partition, &c. The reunion of partners in trade is excluded It follows therefore, that reunion is only affirmed of brothers and the rest Among them, a second distribution of heritage extends to the great grandson The meaning of the text is thus obvious. A subsequent verse (LXXXII) declares generally, that a great grandson shall succeed to the heritage.

No author has inserted the text of CĀTYĀYANA (LXXIX 1) under the title of partition made by a father But on the reading, " should a son die (*mītē putre*), the agent in the sentence, or person by whom shares are allotted, is presented in answer to the question, son of whom? as in the phrase, he behaves with piety towards his mother, and in similar forms of expression now by thus declaring, that, should the son of him, who makes the partition, be dead, the son of that son shall partake of the property, it surely follows, that this relates to partition made by a father. Accordingly the expressions, " receive his share" and so forth, are not unmeaning nor inaccurate. But on the reading of MISRA (*nyē prete*), which he expounds, " when the brother himself dies," the text does not seem to regard partition made by a father As in the phrase, when the *principal* himself is absent let the son support the family, " himself" signifies the person, who ought to support it, so, in this phrase, "himself" signifies the person, who should regularly succeed to the estate by so explaining that reading, the text must surely relate to partition made by a father and accordingly the expressions " receive a share" and so forth cannot be unmeaning But "undivided" must signify one, with whom partition has not been made, for the brother's share is implied However this text must be adduced, as well when the proprietor is living but his son dead, as when both the proprietor and his son are living but the son of that son dead, or when these are all living but the son of that grandson dead The law may be thus concisely expounded.

## CIVII

VASISHTHA —A SHARE of the heritage with the brothers shall be allotted to the widows who have no offspring but

are supposed pregnant, *to be held by them* until they severally bear sons.

SINCE women receive no share when partition is made among brothers, the text appears unmeaning. For this reason CHANDE'SWARA proposes the subjoined interpretation : "widows" here signify wives of deceased brothers. If they be supposed likely to bear sons, a share must be also allotted to them : but, if no son be produced, that share belongs to the brothers ; and the widows must be maintained by them. Consequently shares are only allotted to widows for the behoof of their sons. The brothers succeed to the share of a childless coheir, although he leave a wife ; and they must support her : this follows "evidently from the exposition of the text. Again ; on a cursory view, this appears inconsistent with the text cited in another place (CCCXCVIII). It is thus reconciled by JIMUTAVAHANA and others : a wife equal in class succeeds to the estate of one, who leaves no son ; but a wife of unequal class shall be supported by the collateral heirs. Others reconcile the apparent difficulty in another mode. The whole subject will be discussed under the title of succession to the estate of one, who leaves no male issue.

IT should be here noticed, that a share must also be allotted, from parity of reasoning, to a stepmother who is supposed likely to bear a son : and such is the consistent purport of the text as explained by JIMUTAVAHANA and the rest. But, according to those, who contend for the right of the stepmother to receive a share when partition is made among brothers, the phrase, "until she bear a son," would be unmeaning. To this it is answered, an *equal* share with the brothers must be set apart until she bear a son ; but, if no son be produced, that share shall be taken by the brothers. But the allotment of the stepmother, being directed by another text, shall not be resumed, even though she bear no son. Others consider this text as relating to the son begotten on an appointed wife by a kinsman. This will be explained in its place.

THIS partition can only be made after discharging the father's debts. (CXI). RAGHUNANDANA and others expound the term, which occurs in

that text (CXI), 'to those, to whom payment had been promised by the father.' But the debts of the paternal grandfather must be discharged previous to partition of wealth inherited from him. If there be no property acquired by the father, and the whole estate were left by the paternal grandfather, still, since it became the property of the father, his debts must be paid before any partition can take place: and, if the paternal grandfather should leave no property, his debts must be *nevertheless* discharged; and that before partition: else the subsequent arrangements would be difficult. In fact, debts of the paternal grandfather become debts of the father; they are chargeable on him in the first place; next on his son, as has been already noticed: but the great grandson of the original debtor shall not be compelled to pay the debts, unless he take the assets.

In what circumstances is he considered as holding the assets? Is it only when he becomes the *immediate* heir of his ancestor, who has survived his own son and grandson? or is he likewise considered as such, when the son succeeded to the estate on the death of the proprietor, and after him, the grandson; and on his demise, the great grandson? The answer is, when the estate of the ancestor passes successively to his son, grandson, and great grandson, this last is not the *immediate* heir of his great grandfather, but of his own father. Else, a man, succeeding his father in the possession of property, which had been conferred on him by any person whomsoever, would, with equal propriety, be considered as holding assets of the donor. Although the son of a donee be not considered as holding assets of the donor, because his title, being derived from succession, is very different from one which is held under a gift, why should not a man be considered as holding assets of the donor, if he himself be the person, on whom the property was bestowed? The term being limited to succession in right of affinity or relation, for the sake of removing this apparent difficulty, he cannot in this case be considered as successor to the estate of his paternal great grandfather, for he succeeds in right of his relation, as son, to his own father. Consequently he, who succeeds to the estate of another in right of his relation to him, is considered as holding assets of that person. A brother's grandson inherits, in right of his relation to his great grandfather, an estate devolving on him from one, who leaves no heir within

within the degree of brother's son: must not he pay the debts of his paternal great grandfather? He does not succeed solely in right of his relation to his paternal great grandfather; but as great grandson of the proprietor's father. There is consequently no difficulty. It would be vain to pursue minute disquisitions.

IT should not be argued, that, because the debt was successively due from the son and grandson of *the original debtor*, it therefore becomes, *in respect of the great grandson*, a debt of his father and grandfather. A debt is said to become successively due *from a son and grandson*, merely to show, that the debt of the paternal grandfather must be paid out of the property of the father: else, even the debt of the paternal grandfather would be payable with interest. Nor should it be objected, that the law, which directs the payment of the grandfather's debt without interest, would, on this supposition, become nugatory. When a debt has been contracted after the death of the son, the grandfather subsequently dying, his debt cannot devolve on his son, because that son is not living: the text, which directs payment without interest, might be pertinent, as relative to this case only. Nor should it be said, this is admissible. It is resisted by common sense. Therefore, "paternal" signifies relating or appertaining to the father; and the similar derivative from grandfather bears a similar sense: that relation consists in the producing or incurring of the debt; but in respect of the great grandfather there is no difficulty, for, although his debt devolve on his son and grandson, it was not incurred by them.

RAGHUNANDANA and others remark on a phrase in the text above cited (CXI) "care being taken, that the father continue not a debtor," that if they cannot immediately *pay the debt*, they must promise the creditor to pay it *at a subsequent time* in proportional shares. That promise will not run in this form, "this debt shall be discharged by me." Were it so, since the father would not be declared exonerated from the debt, it could not be said, "care being taken, that he continue not a debtor." Consequently the debt must be undertaken in proportion to the share received out of the heritage; for instance, if the debt of the father amount to a hundred *suvernas*, four brothers must severally declare, "twenty five *suvernas* thereof constitute a debt due

due from me." Were it so, would not a son be liable to pay interest anew on such a debt, although it had already accumulated to its highest limit; for the rate of interest ordained by the law, when it has not been expressly stipulated, cannot be barred? It should not be argued, that it is not a debt in the rigorous sense of the term, because there appears no pecuniary transaction; and for this reason no interest is paid. Were it so, no interest would be paid on the principal sum, *although it had not accumulated to its highest limit.* To the question proposed, the answer is, it remains the same debt after the promise of payment, in like manner as a debt sold: hence interest does not recommence. As in the case of a debt sold, should it happen to remain unpaid, the debtor incurs the sinful taint arising from the nonpayment of a debt due to a person of the buyer's class, not that, which arises from the nonpayment of a debt due to a person of the seller's tribe; and, a preference being given in the order of the classes when debts are discharged, as the preference follows the tribe of the buyer, not that of the seller; so, in this case likewise, should the debt happen to remain unpaid, the son alone falls to a region of torment, not his father. Again; if it be not discharged by him, it must be paid by the son's son; for it was the debt of his grandfather. But if it do not successively devolve in this manner, it shall not be discharged by the son's grandson against his will.

IT should be here remarked, that he, who is averse from the performance of his father's obsequies, shall not obtain a share of the inheritance (CCCXX); if land be assigned for the father's *śrāddha*, by the unanimous consent of all the parceners, expressed in this form, "this land is set apart for the paternal *śrāddha*;" such land must not be divided, so long as they possess any means of support: this practice subsists in some countries.

## CXVIII.

**CA' TYA YANA:**—THE house, arable land, and quadrupeds, which are discovered *to have been the property of the deceased*, must be equally divided: if it be justly suspected, that effects are concealed, a discovery by ordeal is prescribed by law.

## CXIX.

**VRĪHASPATI.**—**THUS MENU** declared, that household utensils, beasts of burden, weapons, milch cattle, ornaments and slaves, must be divided, when discovered among the heirs; and that, if effects are *justly suspected to be hidden*, a discovery must be obtained by the *cōṣṭa*.

THE *cōṣṭa*, says RAGHUNANDANA, is a particular form of ordeal. Lawyers explain it, ordeal by touching water, in which a principal idol has been washed. More on this subject may be found under the title of trial by ordeal.

ON the death of the father, the mother has a claim to an equal share with her own sons, their mothers (stepmothers), or his mothers (wives of the paternal grandfather), *for the term is variously explained*, take the same allotment, and the unmarried daughters, each a fourth of a share (LXXXV). Mothers, says VISHNU (LXXXVI), take allotments proportionate to the shares of sons, and so do unmarried daughters. Since this coincides with the text of VRĪHASPATI (LXXXV), therefore, according to the shares allotted to their own brothers, unmarried daughters shall take a fourth, they take a quarter of the share allotted to their own brothers. Such is the exposition delivered in the *R̥itnarāya*. But to her, who has no brother, such a share must be given, as ought regularly to be allotted *if she had one*—a quarter of the share, which would be allotted to a son of the same class with her mother, shall be computed and given to the damsel for the purpose of defraying her *nuptial* ceremony. Such is the determinate sense of the text. The meaning is, that the fourth part of a share shall be given out of the whole estate. A fourth part being mentioned in several texts, so much only shall be given, but the purpose is to defray the *nuptial* ceremony. Such is the interpretation proposed in the *Calpatru*, with which the *Mitarasīra* and *Pracasa* concur, as is remarked by CHANDEŚVARĀPA. Consequently the brother of a daughter produced by the *Brahmā* shall have four shares; and his sister shall have a fourth part of that allot-

\* This text is attributed to CĀITĀRAYA in some copies, and as there is \* Thus ERNST LINDEMANN  
of \* Thus MĀRA. —

ment, or one share : but the daughter of a *Cshatriya* wife shall have a quarter less than that share, and so forth, in the order of the classes. Hence the meaning of the remark, that the fourth part of a share shall be given out of the whole estate, is, that a quarter of a share shall be made good by taking a sufficient sum out of the allotments of all the brothers. All this is copied from CHANDESWARAV.

It follows from what has been said, that the law does not positively direct a share to be given to sisters as well as to brothers, but their nuptials must be defrayed, by assigning a fourth part of a share for that purpose. Accordingly the sister, taking a fourth part, and defraying the charges of her nuptials with some part of the money, may keep the remainder; but her brothers must not defray her nuptials with a very inconsiderable sum by any *unbecoming* means of *parsimony*: for this end, the allotment of a fourth part is directed. Hence it is said, the purpose is to defray the nuptial ceremony. On this subject MISRA says, the allotment of a fourth part is indeterminate; but the meaning is, that so much shall be given, as may be sufficient to defray the expenses of the marriage. RAGHUNANDANA observes, that the text, which ordains the allotment of a fourth part, intends the appropriation of a sufficient sum for the nuptial ceremony.

## CXX.

**MENU:**—To the *unmarried* daughters, let their brothers give portions out of their own allotments respectively, according to the classes of their several mothers: let each give a fourth part of his own distinct share; and they, who refuse to give, shall be degraded.

JIMUTAVAHANA, commenting on this text, remarks, since it is expressed "let brothers give portions," and since degradation is denounced if they refuse to give the allotment, it follows, that daughters do not receive such portions as having a right to share in the succession. To one brother, who is entitled to a share of the succession, another brother does not give a portion out of his own allotment: if a daughter were entitled to partake of the succession, the partners, not voluntarily yielding her share, would be compelled

elled by the king. Hence degradation, instead of amercement, is properly stated in this case under a title of jurisprudence. For this reason it is said, "out of their own allotments." A portion may well be given by a partner, out of his allotment, to one, who is not entitled to partake of the succession. HELAYUDHA and others hold, that so much only should be given, as is sufficient to defray the expense of the sacrament or marriage; but a fourth part is mentioned by way of example. If there be brothers unequal in class, and none of equal class, still a portion must be given; else the investiture or marriage of a sister would in this case fail. Nor should a quarter of their own share be given, by brothers inferior in class, to the daughter of the Brâhmaṇî wife: for CHANDESWARA observes, that the portion shall be fixed at the fourth part of the share, which would belong to a son of the same class.

THE text of MENU (CXX) is thus interpreted: the fourth part of the shares, which are allotted to brothers of the same class with the sister, shall be computed; and deducting that sum, in due proportion, out of their own several shares, the brothers shall give it as a portion to the unmarried daughters. If the text be read swébbiyab swébbiyab instead of swébbyo'ntibbyab; the repetition supposes two or more brothers; and the sense is, taking a quarter of the allotment of a brother equal in class, let the brethren give it as a portion to the unmarried daughters. The same meaning is also conveyed in the gloss of MîRA. It is not, however, the sense of the text, that all the brethren shall take the sum out of the allotment of those brothers only, who are equal in class with the unmarried sister; for the rest of the brethren cannot take the fourth part of the share belonging to the brother, who is of the same class with the unmarried sister: the expression "out of their own allotments" would be therefore unmeaning, and the investiture or marriage of a sister might fail, should she have no brother equal in class.

It is directed, that a fourth part of a share shall be given; and that allotment, according to CHANDESWARA, is merely intended to defray the expenses of the nuptial ceremony. Others hold, that so much only shall be given, as is sufficient to accomplish the sacrament or marriage. On this subject JAMUTAVAHANA remarks, that, if the estate be considerable, a sufficient sum for

the nuptial ceremony shall be given ; and a fourth part of a share is not positively directed. This must be understood, where the number of daughters and sons is equal : if the number be unequal, a large sum is *thus* given to the daughters, or the sons are altogether deprived of their shares. Nor can this be proper ; for the son is preeminent. A fourth part of a share must be given to sisters ; but, if they be twice or thrice as numerous, they would receive a greater sum than their brothers ; if they be four times as numerous, the brothers would be deprived of their shares ; if they be five times as numerous, the case would be very puzzling. Yet such a case may occur. The rule for giving a quarter of a share cannot therefore be received without exception. In fact, the rule only bears, that a brother shall give a fourth part, if he have a considerable allotment. But if sisters be few in number compared with the brothers, or if there be no brothers, another rule of VISHNU must be adduced.

## CXXI.

VISHNU : — THE marriage and other ceremonies of unmarried daughters must be defrayed in proportion to the wealth *inherited*.

THE text of MENY may be understood in two senses from the ambiguity of the terms. Let them give to each sister a portion equal to the fourth part of the share allotted to a brother of the same class, making up the sum out of their own allotments respectively. Or let them give to their sisters one fourth part of their respective allotments. Consequently, should the sisters and brothers be equally numerous, a quarter of each allotment must be given ; if they be less numerous, a portion equal to a quarter must be made good for each sister ; if they be more numerous, let the brothers, deducting a fourth part from their own allotments respectively, throw all these sums together, and defray the marriages of all their sisters out of this fund. However, the rule of giving a quarter is only intended to ensure the purpose. For instance ; a wicked brother might say, " my sister shall be given to this abject person, who will accept a small nuptial portion ; I care not for the curse of the world, provided my wealth be increased." Prevented in this design, he must obtain an honourable and suitable match for his sister. He must

must give so much, within a quarter of his own allotment, as suffices for such a marriage. However, there is no harm, if he exceed the quarter. But, if the precept for allotting a fourth part of a share be universal, as supposed by CHANDESWARA, then, should two sons inherit a fortune of ten trillions, they would both be guilty of a moral offence, if they happen to expend less than half a quarter of that sum on the marriage of a sister. Now that is not consistent with common sense. Hence the precept, conveyed by the rule, is this: let a brother give money, not exceeding a fourth part of his own allotment, until the sacrament be completed for his sister.

THE *Retrācara* and other works, and RAGHUNANDANA and the rest, concur in expounding ‘sacrament,’ as denoting marriage. The term may signify the ceremony of giving a name and so forth; why is it not so explained? To this objection, we answer; the ten sacraments are only necessary for twice-born men, not for *Sūdras*, nor for women. Authors therefore consider the portion assigned as intended only for indispensable sacraments. The investiture and other ceremonies of a brother, as subsequently mentioned, concern men of twice-born classes: marriage is the only sacrament for a man of the servile class. This is remarked by VĀCHESPATI BHATTĀCHAĀRYA; ‘for other sacraments, besides marriage, are, in respect of the *Sūdra*, voluntary like the consecration of a pool or other *spontaneous* act of religion; they are not required to qualify him for offering funeral cakes.’ He adds, ‘other sacraments are performed by men of low classes, on account of their riches, to attain the rank of *Sat-sūdra*.’ This is founded on the following text.

#### CXXII.

The *Brahme-purāna*!—A MAN of the servile class universally obtains marriage as his only sacrament.

THE word “universally” denotes, that marriage alone is constantly required. Let it not be argued, that a *Sūdra* may use holy texts, where another sacrament is voluntarily performed. The text of YĀMA also forbids the use of prayers on other occasions; “the servile class shall be so governed, the sacraments being performed without holy texts.” That being

the nuptial ceremony shall be given; and a fourth part of a share is not positively directed. This must be understood, where the number of daughters and sons is equal: if the number be unequal, a large sum is *thus* given to the daughters, or the sons are altogether deprived of their shares. Nor can this be proper; for the son is preeminent. A fourth part of a share must be given to sisters; but, if they be twice or thrice as numerous, they would receive a greater sum than their brothers; if they be four times as numerous, the brothers would be deprived of their shares; if they be five times as numerous, the case would be very puzzling. Yet such a case may occur. The rule for giving a quarter of a share cannot therefore be received without exception. In fact, the rule only bears, that a brother shall give a fourth part, if he have a considerable allotment. But if sisters be few in number compared with the brothers, or if there be no brothers, another rule of VISHNU must be adduced.

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#### CXXII

The *Brahma-purāna*.—A MAN OF THE SERVILE CLASS UNIVERSALLY OBTAINS MARRIAGE AS HIS ONLY SACRAMENT.

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the case, since the text of YAMA forbids generally the use of prayers at sacraments performed for men of the twice-born class, may not their marriages be performed without holy texts? That is admissible, and such a practice occurs in many instances. Be it so in respect of "Súdras": how are other sacraments of women merely voluntarily? It must be so held in respect of ceremonies for women of all classes; for the author has omitted to mention it, merely because the preceding reasoning admits of no exception. But those, who are disposed to argue, that all the sacraments are requisite for "Súdras" and for women, but their marriages alone are celebrated with prayers, are obliged, in support of this opinion, to give an extension to the meaning of the words "nuptials" "marriage" which occur in *texts*, as used not in an appropriate sense, but figuratively, for sacrament in general. This point must be so understood from the text, which expresses, "the nuptials of women sprung from twice-born classes are celebrated with prayers."

Since the gift of a share and of a nuptial portion is directed by two different texts, must not both be given? No; for the text of YA'JNYAWALCYA mentions the fourth part of a share as given to defray the ceremony.

### CXXIII.

YA'JNYAWALCYA:—For any of the brothers, whose investiture and other ceremonies had not been performed by the father, those ceremonies shall be performed by brothers, of whom the sacraments have been completed; and for their sisters, by giving a fourth part of their respective shares.

## CXXIV.

DE'VALA:—A NUPTIAL portion shall be given to *unmarried* daughters out of their father's estate.\*

## CXXV.

VYASA:—For any of the brothers, whose investiture and other ceremonies had not been performed, the other brothers, of whom the sacraments have already been completed, shall perform those ceremonies *at the expense of the paternal estate*: and for *unmarried* sisters, the sacraments shall be completed by their elder brothers, as the law requires.

SINCE a nuptial portion is ordained in this and in many texts, and a fourth part of their brother's allotment is stated in other texts, by MENU (CXX) and the rest, the gift of these portions must be argued *in different cases* upon the preceding reasoning. CA'TYA'YANA propounds both forms.

## CXXVI.

CA'TYA'YANA:—For unmarried daughters a fourth share is ordained, and three shares for sons; but if the estate be small, a daughter is considered as having a right to a sufficient portion, without determining the rate.

THE *Retnacara* has this comment: ‘if the portion, fixed at a fourth part of a brother's allotment, be insufficient, and a larger sum be required to defray the charges of the nuptial ceremony, a girl has a right to that sum, wherewith her marriage may be defrayed: so much, therefore, must be given by a brother, out of his own allotment, to defray his sister's nuptials.’ It should not be said, that the same objection occurs as abovementioned; if the sisters be numerous, brothers might be reduced to a small allotment, or be altogether deprived of their shares. Brothers are not reduced to a small allotment, nor altogether deprived of their portions, by dividing the estate into shares according to the number of brothers quadrupled and added to the simple number of sisters, and allotting four shares to each of the bro-

\* See the sequel of the text at v. CCCCXX.

thers and one share to each of the sisters. Nor should it be objected, why has not this mode been noticed by JÍMU'TAVA'HANA? It was his independent choice to omit it. The sense of the text is, if the whole estate be small, daughters have a right, that is, a claim similar to property. The meaning has been explained in the *Retnácarā*. According to this construction, the texts of DE'VALA and the rest may relate to the case where the estate is small; and the allotment of more than a fourth share is therefore authorized. But, in fact, this should only be admitted, when the estate is very inconsiderable: because an unmarried daughter is, as it were, a debt left by the father; since a text declares him criminal, if his daughter's marriage be not accomplished, and another law forbids the sale of a damsel.

IF a damsel, yet unmarried, arrive at puberty in the house of her father, he is guilty of infanticide, by *detaining her at a time, when she might have been a mother*; and the damsel is held degraded to the servile class.

THAT country is held degraded, wherein dwells a man, who has sold his daughter to the embraces of a purchaser:

BUT JÍMU'TAVA'HANA otherwise expounds, the text of CA'TYA'YANA (CXXVI); if the estate be inconsiderable, daughters have a right to one share, and brothers to three. The opinion delivered in the *Retnácarā*, though true by the letter of the law, seems inconsistent with common sense, for it may sometimes happen, that the nuptial ceremony could be defrayed with less than a fourth part of a share. If the father leave no property, how shall a sister's marriage be defrayed? It is not any way defrayed; for the texts of VYĀSA and DE'VALA (CXXIV and CXXV) direct, that the ceremonies shall be performed out of the paternal estate; it is not indeed expressly mentioned in other texts, but a rule directs, not to explain by other arguments what is already obvious.

### CXXVII.

NAREDA:—Or, if no property of the father remain, the in-

\* A text less regularly found than the preceding CXXVIII, but I do not find it arranged in the same order.

vestiture and other ceremonies must be performed, out of their own shares, by brothers, for whom those ceremonies have already been performed.

IT should not be argued from this text of NA'REDA, that, if there be no property left by the father, the nuptial ceremony must be defrayed out of their own acquired property received in alms or the like. That is not admitted by JI'MU'TAVA'HANA. He thinks, that NA'REDA propounds the mode of effecting the investiture and other ceremonies for a brother, when there is no property left by the father, having already propounded (CXXVIII) the necessity of performing those ceremonies for brothers, as appears from the terms of that text (CXXVIII) being in the masculine gender. Consequently, since he had premised the investiture of brothers, the same ceremony must be intended by the context, not the marriage of a sister; and both texts of NA'REDA must be so expounded.

### CXXVIII.

NA'REDA:—FOR any of the brothers, whose investiture and other ceremonies had not been performed by the father in due order, the other brothers shall perform those ceremonies at the expense of the paternal estate.

BUT others hold, that, reasoning from analogy, the marriage of a sister must be defrayed by brothers out of their own acquired property: else, it would be imputed as a great offence to the father, that the marriage of his daughter did not take place. JI'MU'TAVA'HANA himself has used arguments drawn from analogy, in treating of inheritance. For example; in commenting on the text of YA'JNYAWALCYA (LXXXIII), which denies the participation of a wife, to whom female property has been already given, he quotes the text concerning a superseded wife (LXXXVII): now this is an argument drawn from analogy; and that, which is established in one case, is applicable to another, unless a special objection occur. No difficulty is even supposed upon the interpretation of those, who consider the feminine as understood in the masculine terms of the text. If the particular practice, established among the

\* Attributed to Vrasa in the *Vaidikasara Seta*.

*Brāhmaṇas* of this country, by the mighty prince BELLA'LA SENA, who possessed unbounded powers by the favour of the supreme deity, be considered, the *Brāhmaṇa*, who is selected by the priest of the family, must accept a damsel, whose father is deceased, to secure the bliss of all her father's lineage: hence the charges of the marriage must be any how defrayed by her natural guardians; else they would infringe the respect due to her father's race. This practice, though not enjoined by the law, is here mentioned because it has universally prevailed among the *Brāhmaṇas* of Rāḍība. MISRA also acquiesces in this opinion.

It should be observed, that, to acquire the rank of *Satśūdra*, it is necessary for the offspring of a respectable *Sūdra* to perform the investiture and other ceremonies: and this has not been ordained by the law but is founded on custom alone.

### CXXIX.

**SANC'HA and LIC'HITA:**—AN unmarried daughter shall take the ornaments of a virgin and the female property given to her mother at the time of her nuptials.

THE unmarried daughter takes "the ornaments of a virgin," that is, her own ornaments, such as bells worn on the ankle and the like.

The *Retrācara*.

The meaning is, that ornaments or the like, which have been worn by a daughter in the house of her father, the brothers shall not divide after his death, deeming them paternal property, but shall relinquish them to the damsel. "The ornaments of a virgin" may signify ornaments which belonged to the mother while she was a virgin, and what was given to her at her nuptials as expressed in the following text.

### CXXX.

**BAUDHAYANA:**—DAUGHTERS shall take the ornaments of their mother given her at the time of her nuptials, and other effects, such as clothes and the like.

The

The term, used in the text, signifies given at nuptials. They shall also take, besides the ornaments, other effects, which were given to their mother at the time of her nuptials, such as clothes, metallic vessels, and the like. and this must be understood, when the mother is deceased. The subject will be further discussed under the title of succession to the property of a woman. It has been briefly noticed in this place, being suggested incidentally. That a girl shall not take any other property, is intimated in the following text.

## CXXXI.

BAUDHĀYANA after premising the right of inheritance :—

THOSE, who have not faculties *enlightened by knowledge of the law*, shall not take the heritage.

THIS text, grounded on scripture, denotes that women are not capable of inheriting. The term (*rurindrjab*) is explained in the *Pracasa* 'destitute of strength,' *mearing the weaker sex*. This, as is observed in the *Retnācara*, relates to other women than those, for whom shares have been ordained. Accordingly DĒVALA (CCCCXX) mentions the succession of a daughter to the estate of one, who leaves no male issue. This shall be discussed under the title of succession to such person.

THE following text enjoins the investiture and other ceremonies for brothers.

## CXXXII.

VRĪHASPATI :—FOR younger brothers, whose investiture and other ceremonies have not been performed, their elder brothers shall perform them out of the collected wealth of the father.

SOME consider the term *yarīyab* as substituted for *yāyaharab*, with the freedom exercised by sages, omitting the regular inflection and the prolongation of the 10 cl. (*It certainly signifies younger brothers.*) Others take the term in its regular sense, "of the youngest;" and expound the phrase,

phrase, ‘out of the common estate of the youngest *and other brothers.*’ In effect there is no difference.

The *Retnácarā.*

THE first interpretation is obvious; in the second, “out of the common estate” is added to show that the joint-stock is meant, it being already suggested, that the ceremonies must be performed out of the estate of the father, in which the youngest brother has an interest: now the youngest has a claim on the common estate.

IT is remarked in the *Retnácarā*, upon the text of VYĀSA (CXXV), that, “sacraments of sisters” signifies their nuptials. On the texts of YAṄ-NYAWALCYA and NA'REDA (CXXIII, CXXVIII and CXXVII), it is remarked in the same work, ‘that the several sacraments of brothers intend the ‘ceremonies, from that which is performed on the birth of a male, to his ‘investiture with the mark of his clas.’’ After the death of a father, the eldest brother is alone competent to perform those rites; but, in respect of marriage, he, whose investiture and other ceremonies have been performed, is alone competent to direct the nuptial ceremony for himself, whether his father be living or dead. Accordingly many sages have used the terms “elder brothers,” and “brothers of whom the sacraments have been completed.” If it were implied, that the sacraments shall be effected by money, those epithets would be unmeaning. It is not meant, that younger brothers, or those, of whom the sacraments have not been completed, shall not contribute to the expense of a brother’s investiture: for that would contradict common sense; because the third brother would contribute nothing towards the investiture of the second, but would receive a contribution from him for his own. On what argument can this be shown to be consistent with common sense? If it be proposed on the ground of the law which states, that the charges must be defrayed by elder brothers, of whom the sacraments have been completed, not by those, for whom those ceremonies have not been performed, (for that removes the disutility of requiring a sacrifice, of whom the sacraments have not been performed, to defray the charges of their own investiture); still the epithet “elder” would be unmeaning. If it be alleged, that, when a ceremony, other than marriage, is erroneously

performed in an irregular order, for a younger brother before his elder, the due order being a part *not the essence* of a rite, the ceremony is fully accomplished by the performance of the principal *and essential* part, although it have failed in an *unimportant* point; and the text is intended to exempt the fourth brother, whose sacraments had been completed before his elder brother's, during the life of his father: still the consequence is not consistent with common sense; for the plain inference is, that every one of those, for whom the investiture and other ceremonies have been performed, shall contribute money *for the sacraments of another brother.* Consequently all the brothers, whether elder or younger, whether their sacraments have, or have not, been completed, shall contribute money for the ceremony *to be performed;* but the eldest alone, whose investiture has been performed, is competent to conduct the ceremony. The sacrament to be completed is the investiture with the mark of the class, not any one ceremony; since one, for whom the ceremony of tonsure only has been performed, is not qualified for acts of religion.

## CXXXIII.

MENU:—*Till he be invested with the signs of his class,* he must not pronounce any sacred text, except what ought to be used in obsequies to an ancestor; since he is on a level with a *Sūdra* before his new birth from the revealed scripture.

HE is on a level with a *Sūdra*, because he is not qualified for reading the *Vēda*; nevertheless, he is not unentitled to respect. The brother, for whom a ceremony is to be performed, must contribute to the charges of it; as is made evident by VRĪHASPATI; “their elder brothers shall perform those ‘ceremonies out of the collected wealth of the father’” (CXXXII). Why is it said, ‘the ceremonies from that, which is performed on the birth of a male,’ for that is not the first holy rite? The father alone performing the ceremony attending prayers for conception (CXXXIV), a brother is not competent *to recite them.* The ceremony to obtain male offspring, and that of combing the wife’s tresses, need only be performed once; and having been already fulfilled while the eldest brother was in the

\* Ch. II, v. 172, cited anonymously in this place.

mother's womb, there is no occasion for repeating them.\* By mentioning 'ceremonies from that performed on the birth of a male,' it is intimated, that a brother by a different mother is not competent, in the first instance, to perform that and the subsequent ceremonies.

### CXXXIV.

LET the father himself perform the eight ceremonies which perfect the second birth of a twice-born man, like the ceremony on conception; or on failure of him, let another perform them in regular order.†

AN objection may be here suggested. The remark contained in the *Ratnácarā*, on the texts of NA'REDA &c. does not seem accurate; the term there used does indeed occur in the text of NA'REDA (CXXVIII), but it neither expresses, 'brothers, for whom the ceremonies have been completed,' nor 'elder brothers.' This text might therefore be unexceptionably considered as relating to the ceremonies in general, including marriage. Hence all the brothers should contribute to defray the several ceremonies including marriage. This has been thought reasonable by VA'CHESPATI BHATTĀCHA'RĀYA. However it appears to be his opinion, that no ceremony can be legally performed for a younger brother before it has been performed for the elder. That point should be examined by a practised mind.

\* These ceremonies precede birth. 1st, *Garbhdhāna*, a ceremony which should precede conception. 2d, *Pavitraṇa*, a rite performed at the expiration of the third month of pregnancy. 3d, *Sīmātīrṇayāra*, performed in the 4th, 6th or 8th month of the first pregnancy. T.

† By these eight ceremonies I understand—1st, *Titacarma*; a ceremony ordained on the birth of a male, before the section of the ravel string, and which consists in making him take clarified butter out of a golden spoon. 2d, *Nimataras*; ceremony on giving a name, performed on the tenth day after birth; or on the eleventh, twelfth or even the hundred and first day. 3d, *Nīścramaya*; carrying the child out of the house to see the moon, on the third light fortnight from his birth; or to see the sun in the third or fourth month. 4th, *Aṣṭaprasava*; feeding the child with rice, in the sixth or eighth month, or when he has cut teeth. 5th, *Chāḍītaras*; the ceremony of tonsure, performed in the second or third year after birth. 6th, *Upanayana*; tying with the marks of the class, performed in the eighth year from the exception of a *Brahmāṇa*; but it may be anticipated in the fifth, or be delayed to the sixteenth year. 7th, *Sātītīrṇa*; the ceremony of loss of hair followed by the *Cahāra*, which must not be delayed, for a *Brahmāṇa*, beyond the fourteenth year; it should be performed on the fourth day after the first shave. 8th, *Sāmīkṣāṇya*; ceremony on the return of the student from his preceptor's house. The whole number of ceremonies, called *saptāśra*, or expelling the fetal tissue extracted in the mother's womb, are ten. To the eight ceremonies however referred must be therefore added the ceremony which precedes conception (*garbhddhāna*), and marriage, which is the last of the sacraments. There are other ceremonies, two of which are mentioned in the text and in the preceding page, but these are not essential. T.

IT should be here observed, that, if a younger brother contract a marriage, while the elder has not yet taken a consort, it is not a *legal* ceremony perfecting the class of that younger brother: the eldest must therefore contribute money to repeat that ceremony in a legal form; and the younger brother must perform penance. But the contribution is not ordained by the law for this case. Since all the texts contain the expression, “whose investiture and other ceremonies have not been performed,” and direct that those ceremonies shall be performed for such brothers; and since a marriage subsequent to one, which was legal, cannot be considered as the last perfect rite (*those ceremonies having been completed by the first contract*); all the brothers shall not contribute to defray the second marriage of any one brother, whose wife has deceased. He ought, however, to contract another marriage to fulfil his duty, as directed by the following text, wherein ‘twice-born’ is merely illustrative and relates to the four classes.

BUT let not a twice-born man remain a single instant excluded from the *four orders*.\*

IN the *Retnácarā* the text of NĀREDA (CXXVII) is read, *bbrátrinámám púrva sanscřitaib*, “by those, among the brothers, for whom the ceremonies have been performed.” JIMU’TAVA’HANA reads *bbrátribbib púrva janścřitaib*, by those brothers, for whom the ceremonies have been performed.” According to the opinion of those, who consider the feminine as understood in the masculine terms of another text, “any of the brothers or sisters” (CXXVIII), the term “ceremonies” must signify all the rites, from that performed on the birth of a male, to his investiture with the marks of his class; and, *in the case of a sister*, it must signify marriage alone. According to other opinions, the rites, from that performed on the birth of a male to his investiture, must be considered as denoted by that term in every text. Since it is expressed in every text, that the charges shall be defrayed, “brothers” are mentioned indeterminately; where the contribution of money is ordained, that term comprehends a nephew, whose father is dead, and other heirs; for, succeeding to the estate of his paternal grandfather, or other ancestor, he must contribute to the charges

\* If he have no wife living, he is no longer in the order of a married man. To continue in the order of a housekeeper, he must therefore contract another marriage. T.

of the investiture or other ceremony performed for the son, as well as discharge the debts, of that ancestor. But paternal uncles need not defray those ceremonies for a nephew, since the performance of them was a duty incumbent on his father *not on their's*. Upon this subject VA'CHESPATI BHATTA'CHARYA says, 'a brother is the proper person to perform and defray those ceremonies for a nephew, if the paternal grandfather be not living.' This is founded on the following text, and on the rule, that an exposition of law, established in one case, is applicable to others, unless there be good ground of exception.

## CXXXV.

YA'JNYAWALCYA:—IN the disposal of a girl, the father, the paternal grandfather, the brother, a kinsman, or the natural mother, shall be consulted in the order here specified; upon the death of the first, the right of giving away the damsel devolves on each of the others successively, provided they be of sound understanding.

This should be examined. The two acts are not similar; for, were they so, a mother would be likewise competent to perform the investiture and other ceremonies for her son. But on failure of uterine kindred, brothers of the half blood and so forth, as far as learned priests (that is, relatives within the degree of *sapindas*, and remoter kinsmen, in the order of propinquity), must be deemed competent to perform those ceremonies, as common sense shows. The order of performing them is this. first, the rite on the birth of a male should be performed, next, the ceremony of giving a name, and so forth; and among persons, for whom a ceremony is to be performed, it should be first done for the eldest, and last for the youngest. but the ceremony of boring the ears is no rite necessary to perfect the twice-born man. In respect of brothers by different mothers, there is no particular order to be observed. Such is the opinion of RAGHUNANDANA. To discuss this subject further could be superfluous.

## CXXXVI.

CAYA'YAN:—Effects which a kinsman has embezzled, let  
not

not a coheir use violence to make him restore; nor let a coheir be obliged to make good what he had expended before partition.

THE first hemistich relates to effects embezzled, at the time of partition, by a kinsman, that is, by a brother or other coheir: this will be considered in another place.\* The last part of the text is an answer to the question, whether a brother shall be obliged to make good, at the time of partition, what he had consumed during co-parcenary more than his coheirs, in consequence of having a large family, or of his being subject to greater expense than the others. Consequently the sense is virtually this; the coheirs shall only divide that, which remains over and above what has been expended by any of the brethren, who live together and partake of the same food. Shall a brother be obliged to make good what he has expended for the nuptials of a daughter? The answer is, since all the co-heirs are interested in a duty fulfilled at the charge of the common estate, that money is virtually expended by all the parcers: therefore it shall not be made good. Nor shall that, which has been disbursed for the enjoyment of a woman, be repaid; for the term use or expenditure comprehends fruition. If it only signified the act of swallowing, a coheir would be bound to make good what he had previously expended, for clothes or the like. But what he has embezzled, though not yet disbursed must be made good. This will be explained in its place. All other property, which is partible, let the coheirs divide. Partible property will be hereafter explained.

THE mode of making a partition is declared in a text of MENU (LIII). The deducted allotment must be given according to age and virtue, as already mentioned in a former chapter. CHANDE'SWARA alleges a reading, *sama-varnāśu vā jātāb*, instead of *sama-varnāśu ĵē jātāb*. He considers sons produced by wives unequal in class as comprehended in the text (LIII) by the particle "or" (z&): if there be many sons, the portion of an eldest son is not supposed due to more than one; the deducted allotment shall only be given to the eldest of them all. By "many" is meant the number of three or more; for MENU has noticed the portion of a third son (XXXIX 2). But

other lawyers hold, that the legislator, having propounded partition among brothers unequal in class, resumes the subject as it relates to brothers of the same class, for the sake of embellishing his book by *fully explaining, the subjects treated.* The deduction shall be regulated in the mode already explained.

MISRA thus expounds a text of MENU cited in a former chapter (LXXIII): “it is not the act of their father; therefore no deduction of a twentieth part or the like is allowed in this case.” The meaning is, when property has been acquired by the labour of the brethren, the shares, in a distribution made by them, not by their father, shall be equal, without any disparity whatsoever. But, if the partition be made by the father, he shall have either a double share, or half of the whole; it is therefore said, it is not the act of the father. Still it is directed by MENU, that brothers shall have equal shares (XXIX). Or it may signify, “it was not the wealth of the father,” merely describing the nature of the property. In effect the additional share of an eldest son is forbidden in this case.

### CXXXVII.

GO'TAMA, after premising property acquired by themselves:  
—UNLEARNED brethren must make an equal division of it.

THE text of MENU, formerly cited (CVII), and as there expounded, is properly referred to the case of an indolent brother, for it is delivered by MENU when treating of exertion for gain.\* It may, however, be taken in another sense, from the ambiguity of the terms; for there is need of a precept on that subject. This has been already explained at large. The following text contains a precept relative to property acquired by the labour of any one brother, with supplies from the patrimony; but unaided by the labour of the rest.

### CXXXVIII.

VASISHT'HA:—He among them, by whom property is acquired through his own sole labour, shall take a double share of it. +

\* Chapter 9, v. 207.

† Already inserted, v. LXXV.

IT follows, that the rest shall have one share each. MISRA concurs in this inference. He remarks on the text of VYĀSA (CX), that "valour or "the like" signifies generally any mode of acquisition, such as science and the rest : for the term "or the like" relates to the modes of acquisition, and is joined in this apposition to a term of the same nature. Is not property, which has been gained by learning, valour and the-like, even with the use of the common stock, exempt from partition ; and does not this contradict the rule above cited ? No ; for that relates to the particular exertions of learning, valour and the rest, as described by CA' TYA' YANA, but this relates to another case ; the simple display of learning, not as there described.' (It is not improperly said, "the rule above cited ;" for MISRA first considers property gained by learning.) According to MISRA, the rest of the coheirs do not participate in wealth acquired by learning, *in the cases described by CA' TYA' YANA*, even though supplies be received from the joint estate. But this contradicts the opinion of JI'MU'TAVA'HANA and others. It will be discussed under the head of wealth gained by learning. But, if the common stock be not used, they, who make not the acquisition, shall have no share. This will be also discussed in the same place. It may be here observed, that the additional share of an eldest son shall not be allowed in this case, because it appears to be only admitted, in the case of property left by the father, on account of the benefit received by him through *the birth of* his eldest son. It should not be objected, that, were it so, the word "all," in texts which ordain equal division, would be superfluous. Since he, who makes the acquisition, shall have a double share of wealth gained without a common exertion of all the pareners, equal partition does not take place.

SINCE the term "wives of the same class," in the text of MENU (LIII), is expressed in the plural number, is it not intimated, that the distribution shall be made among the brothers produced by two or more wives who are equal in class, not among the mothers ? And does not this contradict the rule of GO'TAMA (LIX) ? No ; for that rule directs partition to be made among brothers through the medium of their mothers, when the number of sons by several mothers is equal, to avoid the trouble of distributing a very great number of shares. Accordingly that is declared in the texts of VR̄IHASPATI (LXII and LXIII). If the sons born of one mother be equal in class with those

those born of others, that is, if all be of the same class; and if they be equal in number, that is, if the sons produced by each mother be equally numerous; then, all the mothers being equal in class and having produced an equal number of sons, *such a mode of distribution may be adopted.* This is illustrative of a general meaning. The sons must be also supposed equal in good qualities; else, since the portion of the eldest son must be regulated by the degree of virtue *possessed by him*, a distribution could not be properly made through the medium of the mothers. In some instances the division may be made in right of the mothers, even though the degree of virtue be discriminated: but that is not at present noticed, because it is not pertinent, since it supposes the sons not numerous, and because it is encumbered with many wrong interpretations. But, if the number be unequal, though the class be the same, one mother having five sons, another four, and so on, the shares must be allotted to males (LXIII). The text is delivered to make it evident, that the distribution may be originally made among males, even in the case of many sons produced by wives equal in class. Or the term, used in the text, signifies distribution regulated by the number of males: and that can only take place when they are of the same class; for unequal distribution will be directed among those, who belong to different tribes. Since coheirs of various classes have not equal shares, the text of VISHNU expresses, "let sons of the same class receive equal shares, but give the best chattel with a deducted allotment to the first born" (LIV). The deducted allotment of an eldest son has been explained.

By directing equal shares for sons produced by wives of the same class, it is intimated, that sons produced by wives of various tribes shall have unequal shares: what portions shall they receive?

#### CXXXIX\*

**MENU:**—This law, which has preceded, must be understood of a distribution among sons begotten on women of the same class: hear now the law concerning sons by several women of different classes.

\* The three preceding texts have been already inserted at v. LX.

2. If there be four wives of a *Brahmana* in the direct order of the classes, and sons are produced by them all, this is the rule of partition among them:
3. The chief servant in husbandry, the bull kept for impregnating cows, the riding horse or carriage, the *ring and other ornaments*, and the principal messuage, shall be deducted from the inheritance and given to the *Brahmana* son, together with a larger share by way of preeminence:
4. Let the *Brahmana* take three shares of the residue; the son of the *Cshatriyá* wife, two shares; the son of the *Vaisýá* wife, a share and a half; and the son of the *Súdrá* wife may take one share.

" A DISTRIBUTION among sons begotten by the same father on women " of equal class;" "the law concerning sons produced by several women " of different classes:" such is the construction of the text. " The chief " servant in husbandry;" the ploughman. Hence the ploughman, the bull, the riding horse, the ornaments, and the principal messuage shall be given to the son of the *Brahmaní* wife; and one of his three shares is allotted to him by way of preeminence, because he is the principal and most excellent son. It is observed in the *Retnácarā*, that the bull and the rest shall be given to him, if there be such cattle and things, belonging to the estate. The term, which occurs in the text, being expounded " women of the same class," it alludes to partition among sons produced by several mothers of the same class, and to the deducted allotment, which had preceded: and that follows from the term being used in the plural number. It is, however, merely illustrative, and relates also to partition among the sons of one mother. Several women of different classes are determinately meant; for one wife cannot be of different classes. Yet in fact several is not limited to the literal sense of three or more, but intends generally the case of two or more wives. The following texts propound a distribution made without any deducted allotment.

## CXL.

MENU:—OR, if no deduction be made, let some person learned in the law divide the whole collected estate into ten parts, and make a legal distribution by this following rule:

2. Let the son of the *Brahmāṇī* take four parts; the son of the *Cshatriyā*, three; let the son of the *Vaiśyā* have two parts; let the son of the *Sūdrā* take a single part, if he be virtuous.

“ THE son of the *Brahmāṇī*;” since the sense is not positively limited to one, the same rule is applicable, if there be two or more sons of the *Brahmāṇī*.

The *Retnācara*.

IN a word the sons of the *Brahmāṇī* shall each take three shares or four. Consequently, if there be two sons by the *Brahmāṇī* wife, three by the *Cshatriyā*, two by the *Vaiśyā*, and four by the *Sūdrā*, in all eleven sons; the estate must be divided into nineteen or into thirty-three\* shares, and six or eight shares must be given to the two *Brahmāṇas*; six or nine shares, to the three *Cshatriyas*; three or four shares, to the two *Vaiśyas*; and four to the *Sūdras*. The two forms of distribution, says *JīMU'TAVĀ'HANA*, are regulated by some difference in the degree of virtue. The following text also notices the second mode of partition.

## CXLI.

NA'REDA:—THE shares diminish in the order of the classes for sons of an inferior tribe begotten on women legally married.

“ Sons of an inferior tribe;” such as the *Cshatriya* and other sons of a *Brahmāṇa*. “ Legally married;” lawfully espoused. “ The shares diminish;” that is, the son of the *Brahmāṇī* shall have four shares; the son produced by the *Cshatriyā*, three shares, and so forth. The text is in some places read *varṇāntarēśhu*, sons of other classes, instead of *varṇāvaraśhu*, sons of an inferior tribe. Still the sense is the same.

The *Retnācara*.

\* The number is erroneous in the original. It should be twenty-five. T.

THE 'Súdra; being lowest of all, has one share; the *Vaisya*, being next above him, shall have one more, that is, two shares; the *Cshatriya* shall have one more, or altogether three shares, and the *Bráhmaṇa* shall have four: the shares are diminished by one in each step. Consequently, for each inferior tribe the allotment is one share less than for the next superior class: such is the real sense of the text. The other reading may be explained, 'for each different inferior class, the allotment is one share less than for the preceding.'

THIS distribution concerns the sons of a priest; but the same method may be observed in partition among the sons of a soldier or merchant. Consequently two shares, or three, for the son of the *Cshatriya* wife (CXXXIX and CXL), regard the legitimate son of a soldier as well as the legitimate son of a priest. In like manner, there is no difficulty in considering the share and a half and two shares for the son of the *Vaisya*, as relating to the legitimate sons of a priest, of a soldier, or of a merchant. It should not be argued on the other hand, that both forms of partition must be considered as relating to the legitimate sons of a priest only, because the text premises, "if there be four wives of a *Bráhmaṇa*." YĀJNYAWALCYA propounds the second form of distribution for such cases: and, to satisfy the question arising on the first method, which may be applied to the legitimate sons of a soldier, it is proper so to extend its application.

#### CXLII.

YĀJNYAWALCYA:—THE shares allotted to the sons of a *Bráhmaṇa*, by wives of different tribes, shall be four, three, two, and one, in the order of the classes; to the sons of a *Cshatriya*, three, two, and one; to those of a *Vaisya*, two, and one.

WHEN a *Bráhmaṇa* has four wives, a *Cshatriya* three, or a *Vaisya* two, this is the form of partition among the sons born of them. The terms used in the text are explained in the *Retrácarā*, sons of a *Bráhmaṇa* born in different classes; that is, produced by women of various tribes. The same should be understood in the sequel of the text. The first mode of distribution takes place

place when all the sons are equally virtuous, or *equally* deficient in virtue; the last mode, when the son of the 'Súdrá wife is alone deficient. But if the son of the 'Súdrá be very deficient in virtue, the *Mabdbhárata* directs the following distribution among the sons of a *Cshatriya* and among those of a *Vaisya*.

## CXLIII.

The *Mahábbárata* (BHISHMA addresses YUDHISHTHIRA):—FOR a *Cshatriya* two wives are ordained, O son of CURU! or a third wife of the servile class may be taken, but that is not directed in holy writ:

2. The estate of the *Cshatriya* father must be divided into eight parts; and the son of the *Cshatriya* wife shall receive four such parts of his father's estate;
3. And he shall also take whatever implements of war belonged to his father: but the son of the *Vaisya* wife shall have three shares; and the son of the 'Súdrá, one;
4. THE 'Súdrá shall receive his share, if it be allotted to him by his father, but he is not entitled to claim any portion, unless it be expressly given to him. One wife only shall be married by a *Vaisya*, O son of CURU!
5. Or a second wife of the servile class; but such a second marriage is not ordained in holy writ: his estate shall, however, be divided into five parts.
6. I will now propound the distribution of those shares between his two sons; four shares of the estate shall be taken by the son of the *Vaisya* wife;
7. But the fifth part shall belong to the son of the 'Súdrá: he shall receive that share, if it be allotted to him by his father; but he is not entitled to claim any portion unless it be expressly given to him.

A SIMILAR mode of distribution should be established for the sons of a *Brāhmaṇa*; since the question arising on this point cannot otherwise be satisfied. That distribution is as follows; the son of the *Brāhmaṇi* wife shall have five shares, the son of the *Cshatriyā* four, the son of the *Vaiśya* three, and the son of the *Sūdrā* one: the estate must be therefore divided into thirteen shares. This was also contemplated by *NA'REDA* (CXLI). However, the son of the *Sūdra* has two shares less than the class next above him, merely because he is very deficient in virtue.

IN the *Vivāda Chintāmeni* the verse concerning the *Vaiśya* (CXLIII 5) is read *dwitīyā vā bbavet̄ Sūdrā na tu dṛiṣṭā trītyacā* (or a second wife of the servile class may be espoused by him, but no third wife is ever seen), instead of *dwitīyā vā bbavet̄ Sūdrā na tu dṛiṣṭāntatab smṛitā*. *Dṛiṣṭānta* here signifies the *Vēda*: the sense is, that, if a third wife of the servile class, though unnoticed in holy writ, be married by a *Cshatriya*, her son may have such a share as is mentioned. The sense is the same in the subsequent verse (CXLIII 5). "The implements of war" are explained in the *Retnācara*, warlike weapons, as a scimitar and the like. The espousal of a *Sūdrā* is censured by the tenour of the preceding texts. *MENU* expressly reprehends such a marriage.

#### CXLIV.

*MENU* :—FOR the first marriage of the twice born classes a woman of the same tribe is recommended; but for such, as are impelled by inclination to marry again, women in the direct order of the classes are to be preferred;

2. A *Sūdrā* woman only must be the wife of a *Sūdra*; she and a *Vaiśyā*, of a *Vaiśya*; those two and a *Cshatriyā*, of a *Cshatriya*; those three and a *Brāhmaṇi*, of a *Brāhmaṇa*.

THE particle "only" refers to every part of the sentence, "she," "those two," "those three;" the subsequent phrase being thus connected with the preceding, marriages must in no instance be contracted in the inverse order of the classes. "But for such, as are impelled by inclination to marry again,

" wives in the direct order of the classes are to be preferred :" this is mentioned to show a venial offence, not absolute freedom from guilt.

JÍMU'TAVA'HANA.

" Wives in the direct order of the classes are to be preferred ;" for a *Bráhmaṇa* the most proper wife is a *Bráhmaṇī*; a *Cshatriyā* wife is in some degree disapproved; a *Vaiśyā* is more censured; but a *Súdrā* is much blamed. In this case women of the military and commercial classes are also pronounced to be censurable wives for a priest, not a *Súdrā* alone; the same is also declared in respect of a soldier : how does it follow, that a *Súdrā* wife of a *Cshatriya* has not been noticed by the *Veda*? The following texts resolve this question.

#### CXLV.

**MENU** and **VISHNU** :—**MEN** of the twice born classes, who, through weakness of intellect, irregularly marry women of the lowest class, very soon degrade their families and progeny to the state of *Súdras*:

2. According to **ATRI** and to (**GO'TAMA**) the son of **UTAT'HYA**, he, who *thus* marries a woman of the servile class, *if he be a priest*, is degraded instantly; according to **SAUNACA**, on the birth of a son, *if he be a warrior*; and, *if he be a merchant*, on the birth of a son's son, according to **BHRĪGU**.
3. A *Bráhmaṇa*, if he take a *Súdrā* to his bed, *as his first wife*, sinks to the regions of torment; if he beget a child by her, he loses even his priestly rank.

THESE texts are cited by **JÍMU'TAVA'HANA**, when treating of *marriages* in the direct order of the classes, with this preliminary observation; ' both legislators declare it a great offence for a twice-born man to marry a woman of the servile class.' He explains women of the lowest class, *'Súdrā women.* Consequently the preceding text of  **MENU** pronounces it an offence for a priest

priest to marry women of the military and commercial classes, and these texts notice the greater offence of marrying a woman of the servile tribe: the present texts (CXLV) do not propound the less offence of marrying women of the military or commercial classes as well as the greater offence of marrying a woman of the servile tribe; for the term, " women of a low class," must signify *Súdrá* women; else it would disagree with the context, where it is said, that by such marriages men soon degrade their families and progeny to the state of *Súdras*, for the son of a *Cshatriyá* woman by a priest is acknowledged as a *Cshatriya*.

## CXLVI.

*Smriti* :—LET men of mixed classes perform the several rites during purity and impurity like those who belong to the same class with their mothers.

UPON the opinion of those, who consider them as *Súdras*, it cannot be argued, that there would be no disagreement with the context; for the contradiction of the subsequent texts (CXLV 2 and 3) could not be well reconciled, nor the inconsistency with the text (CXLVII) which introduces those precepts.

## CXLVII.

*MENU* :—A WOMAN of the servile class is not mentioned, even in the recital of any ancient story, as the first wife of a *Bráhmaṇa* or of a *Cshatriya*, though in the greatest difficulty to find a suitable match.

ACCORDINGLY *HA'RITA* also passes a severe censure on those, who marry women of the servile class.

## CXLVIII.

*HA'RITA* :—No other is sacrilegious like the husband of a *Súdrá*; for that priest, by whom she conceives, shall perish.

Thus, coinciding with the texts of MENU and the rest, must relate to a Súdrá actually married by a twice-born man.

JÍMU'TAVA'HANA.

### CXLIX.

SANC'HA :—A Bráhmaní, a Cshatriyá and a Vaiśyá are pronounced suitable wives of a Bráhmana; a Cshatriyá and a Vaiśyá, of a Cshatriya;

2. But a Vaiśyá is the only wife ordained for a Vaiśya, and a Súdrá for a Súdra.

ACCORDINGLY SANC'HA enumerates the legal wives for a man of a twice born class, without mentioning a Súdrá woman.

CONSEQUENTLY those evils follow the marriage of a Súdrá, not the mere procreation of children on a woman of that class; for it is remarked by JÍMU'TAVA'HANA, that 'these evils do not follow the procreation of a child on a woman of the servile class who has not been espoused by the begetter; but the offence is venial, and a slight penance must be performed, as will be mentioned.'

### CL.

YA'JNYAWALCYA :—WHAT has been said of twice-born men taking wives of the servile class, is not approved by me, because the husband is himself born a second time *through the birth of a son*.

2. THREE wives, in the direct order of the classes, are ordained for the Bráhmana; two and one, for the Cshatriya and Vaiśya respectively; and a woman of his own class, for the Súdra.

IN the direct, not in the inverse, order of the classes. The wives of a Bráhmana, Cshatriya and Vaiśya are respectively three, two and one in number.

ber. Some legislators have mentioned, as authorized by the *Veda*, the marriages of *Brāhmaṇas* and the rest with women of the servile class : that is not my opinion ; I propound another exposition of the *Veda*. Such is the sense of the text. It therefore coincides with the observation, that such a marriage is not ordained in holy writ. However, YĀJÑAWALCYA does also recognise the marriage of a *Brāhmaṇa* with a 'Súdrá woman; else his former text (CXLII) would be irrelevant: and such a marriage with a 'Súdrá woman is only contracted through the impulse of inclination, but is not ordained by the *Veda*; for this coincides with the *Mahābhārata* (CXLIII).

## CLI.

**PAJT'U'NASI** :— FOUR wives may be espoused by a *Brāhmaṇa* ; and three, two and one, by men of other classes respectively.

THAT is, three wives may be espoused by a *Cshatriya*; two by a *Vaisya*; and one by a 'Súdrá.

## CLII.

**SANC'HA** and **LIC'HITA** :—THE most suitable match for every tribe is a wife of the same class.\* Or four wives may be allowed to a priest in the order of the classes ; three, to a warriour ; two, to a merchant ; and one, to a man of the servile class.

CONSEQUENTLY marriage with a woman of the same class only, marriages of twice born men with women of different classes except the 'Súdrá, and their marriages with women of various classes including the 'Súdrá, are still three practices, of which the last is less proper than the preceding. Such is the sense conveyed ; it is mentioned incidentally : the practice is authorized by the law, and a *Brāhmaṇa* may, at his pleasure, take one, two, three, or four wives, for each of those modes of acting have been propounded. VISHNU successively declares the partition to be made when all those wives bear sons, and when any one of them is childless.

\* An option has been already given at v. CXLIX.

Note by the Compiler.

## CLIII.

VISHNU:— « THE sons of a *Brahmana*, who were produced by women of the four different classes, shall divide the paternal estate into ten parts, of which the son of the *Brahmani* shall take four shares ; the son of the *Ghatriyá*, three ; the son of the *Vaisýá*, two ; and the son of the *Súdra*, one. » But, if a *Brahmana* leave three sons, and none by a *Súdra* wife, they shall divide the estate into nine parts, and take their respective allotments of four, three and two shares in the order of the classes.

BUT if no woman of the commercial class have been taken in marriage, or if such a woman have been espoused, but prove barren, VISHNU also propounds the form of distribution for that case.

✓ IF there be no son of the commercial class, let those of other tribes divide the estate into eight parts and take respectively four shares, three, and one.

LET the priest take four shares, the warrior three, and the *Súdra* one, in the same mode, and for the same reasons, which have been mentioned. He proceeds to the distribution made when there is no son by the *Ghatriyá* wife.

✓ IF there be no son of the military class, the estate shall be divided into seven parts, and the several allotments shall consist of four shares ; of two, and of one. » If there be no son of the sacerdotal class, the estate shall be divided into six parts, and three shares shall be allotted to the *Ghatriya*, two to the *Vaisýa*, and one to the *Súdra*.

HAVING propounded the distribution among three sons, he proceeds to delineate the partition between two.

✓ SHOULD a *Brahmana* leave two sons, one a priest, the other

other a warriour, the priest shall take four shares of the estate divided into seven parts, and the warriour three. If Should he leave a son of the sacerdotal, and one of the mercantile class, the *Bráhmaṇa* shall receive four shares of the estate divided into six parts, and the son of the *Vaiśya* two. If Should he leave two sons, one a *Bráhmaṇa*, the other a *Súdra*, let them divide the estate into five parts, and let the *Bráhmaṇa* receive four shares, and the *Súdra* one. If Should a priest or a soldier leave two sons, one a *Cshatriya*, the other a *Vaiśya*, let them divide the estate into five parts, and let the *Cshatriya* take three shares, and the *Vaiśya* two. If Should a priest or a soldier leave two sons, one a *Cshatriya*, the other a *Súdra*, they shall divide the estate into four parts, and the *Cshatriya* shall receive three shares, and the *Súdra* one. If Should a priest, a warriour, or a merchant, leave two sons, one a *Vaiśya*, the other a *Súdra*, they shall divide the estate into thrce parts, and the *Vaiśya* shall receive two shares, and the *Súdra* one.

VISHNU again declares perspicuously another form of distribution.

If there be two sons by the *Bráhmaṇi* wife, and one by the *Súdrá*, let the sons of the *Bráhmaṇi* take eight shares of the estate divided into nine parts, and the *Súdra* one. If But, if the sons of the *Súdrá* be two, and the offspring of the *Bráhmaṇi* one son, let the *Bráhmaṇa* take four shares of the estate divided into six parts, and the sons of the *Súdrá*, two. On this principle Thares should be also distributed in other cases. An only son shall succeed to the whole estate of a *Bráhmaṇa*, provided he were born of a *Bráhmaṇi*, *Cshatriyá*, or *Vaiśya*, wife; to the estate of a *Cshatriya*, provided he were born of a *Cshatriyá* or *Vaiśya* wife; to the estate of a *Vaiśya*, provided he were born of a *Vaiśya* wife: a *Súdra* succeeds to the estate of a *Súdra*.

If a *Brāhmaṇa* leave an only son by one of three wives, a *Brāhmaṇa* and the rest, that son, being a *Brāhmaṇa*, a *Cshatriya*, or a *Vaiśya*, shall succeed to the whole of his father's estate. In like manner, the only son of a *Cshatriya* by one of two wives, being either a *Cshatriya* or a *Vaiśya*, shall succeed to the whole estate; and the only son of a *Vaiśya*, provided that son be of the commercial class: but the only son of a *Sūdra* by a *Sūdra* wife shall succeed to his father's whole estate. The third wife of a *Cshatriya*, and the second wife of a *Vaiśya*, are not here mentioned, because such marriages are not authorized by the *Vēda*.

## CLIV.

**VASISHT'HA:** — WHEN a *Brāhmaṇa* leaves sons of the sacerdotal, military and commercial classes, the son of the *Brāhmaṇi* shall take three shares; the son of the *Cshatriyā*, two; and the rest shall share alike.

The *Retnācara* furnishes the following gloss on this text. "The rest" signifies the sons of the *Vaiśya* wife. *VISHNU* and *VASISHT'HA*, thus propounding a different partition, must be reconciled upon the greater and less degrees of virtue, which distinguish the parceners. Regularly they should receive allotments of four, three, and two shares in the order of the classes. The text is thus reconciled to the rule of *VISHNU*. It is applicable when the son of the *Vaiśya* possesses few good qualities; and the distribution must be so made, when no deducted allotment is given, for it coincides with the text of *MENU* (CXL).

## CLV.

**SANC'HA** and **LIC'HITA**:—SONS, produced by women of a different class from the father, receive shares of the heritage in the subdouble proportion, following the order of the classes.

CONSEQUENTLY, should a *Brāhmaṇa* have male issue by four wives of various classes, his estate must be divided into fifteen parts, and eight shares must be allotted to the *Brāhmaṇa*, four to the *Cshatriya*, two to the *Vaiśya*, and one

one to the *Súdra*: but, if there be no son by a 'Súdra' wife, it must be divided into fourteen parts and distributed on the same principle in the order of the classes, or it may be divided into seven parts, allotting four shares to the *Bráhmaṇa*, two to the *Cshatriya*, and one to the *Vaīśya*; ultimately there is no difference: if there be no son of a *Cshatriya*' wife, the estate should be divided into eleven lots, of which eight belong to the *Bráhmaṇa*, two to the *Vaīśya*, and one to the 'Súdra': if there be no son of a *Vaīśya*, eight shares out of thirteen belong to the *Bráhmaṇa*, four to the *Cshatriya*, and one to the 'Súdra': if there be no son of the *Bráhmaṇi* wife, the *Cshatriya* shall have four shares out of seven, the *Vaīśya* two shares, and the 'Súdra' one. The estate of a *Bráhmaṇa* must be so distributed. Should a warriour leave three sons by three wives of various classes; the distribution is made by dividing the wealth into seven parts; or, if there be no son of a 'Súdra' wife, by dividing it into six or into three shares; if there be no son of the commercial class, by dividing it into five lots: the wealth of a *Cshatriya* must be so distributed. Should a *Vaīśya* leave two sons, his estate must be divided into three shares. The distribution among three sons has been stated above: but if a *Bráhmaṇa* leave two sons, one a priest, and the other a warriour, partition shall be made by dividing the estate into twelve, *into six, or into three*, shares; or if one be a priest, and the other a merchant, by dividing it into ten, or into five, lots; or, if one be a *Bráhmaṇa*, and the other a 'Súdra,' by dividing it into nine parts: in the other cases the partition is similar to that of a *Cshatriya*'s estate. Such is the sense conveyed by the text of *SANC'HA* and *LIC'HITA*; and it must be understood, that this mode of distribution is adopted, when the good qualities of the sons decline in the order of the classes. But some lawyers think, they can maintain the following bad exposition. "Subduple" they explain, half or other part of a full share: he, who has such an allotment, has a certain specifick share of the whole; and the text may consequently coincide with that of *NA'REDA* (CXLI). The following text concerns the case where superiour virtue is found in the inverse order of the classes.

## CLVI.

**VRĪHASPATI:**—THE son of the *Cshatriya* wife, being elder by birth and superiour in good qualities, shall have an

equal share with the son of the *Brahmāni*; and such a son of a *Vaiśyā* wife shall have an equal share with the son of the *Cshatriyā*.

The son of the *Cshatriya* shall have an equal share with the priest, if he be senior by birth and superior in good qualities: such is the construction of one part of the sentence. If the son of the *Vaiśyā* be also senior by birth and superior in virtue, he shall have an equal share with the *Cshatriya*. Is he here supposed senior by birth and superior in good qualities to the son of the *Cshatriya* or to the son of the *Brahmāni*? On the first supposition, if he were also senior by birth and superior in good qualities to the son of the *Brahmāni*, he would have an equal share with that son. The second supposition is not reasonable; for it would be unnoticed, that he shall have an equal share with the son of the *Cshatriya*, if he be senior to him by birth and superior in good qualities; now he ought to have an equal share with him, in right of that seniority alone, without being also senior by birth and superior in good qualities to the son of the *Brahmāni*. To this it is answered, he shall have an equal share with the son of the *Cshatriya*, if he be senior to him by birth and superior in good qualities; but, if he be senior to the son of the *Brahmāni*, there is no difference. For sons take one additional share for each gradation, in right of superior class; and, if a son of the next inferior class be superior in respect of age and good qualities, then, mutual equality being restored, they shall have equal shares; but if the son of a class two degrees lower be senior by age and superior in virtue, then, reducing the great superiority of class, an equality arises with the intermediate tribe, for the parity is only admitted in right of superiority by age and good qualities. If the sons of the *Cshatriyā* and *Vaiśyā* be both superior in age and virtue to the son of the *Brahmāni*, but the *Cshatriya* be inferior to the *Vaiśya*, their claim is equal to that of the *Brahmāna*; if the *Vaiśya* surpasses the *Cshatriya*, at the same time that both are inferior to the *Brahmāna*, his claim must be affirmed equal with that of the *Cshatriya*. It would be a great disparity, that

## CLVII.

BAUDHAYANA:—A son by a woman of equal class, and a virtuous son by a wife of a class one degree lower than her husband, shall take the portion of an eldest child: a virtuous son is the supporter of the rest.

If he only surpasses in virtue, he shall take the portion of an eldest son, that is, a deducted allotment; if he be superior both by age and virtue, he has an equal claim with the class next above him, as also mentioned by VRĪHASPATI; for the *Cshatriya* and the rest cannot have an equal share with the *Brāhmaṇa*, unless they receive the portion of an eldest son. JIMUTAVĀHANA observes, ‘it is thus shown, that the son of a *Sūdrā* wife may in similar circumstances be entitled to an equal share with the *Vaisya*.’ The portion of an eldest son, mentioned by VRĪHASPATI (XLV), may be argued as applicable even to this case: but the discussion of this point would needlessly swell the volume.

## CLVIII.

GO'TAMA:—THE son of a *Brāhmaṇa* by a *Cshatriya* wife, being endued with good qualities, shall have an equal share with the first born, excepting the deducted portion of an eldest son.

THE *Retnacara* furnishes this gloss: excepting the bull and the rest of the portion deducted for an eldest son: that is, no deducted allotment, such as the portion of an eldest son, shall be given to him. Consequently the meaning is, that he shall have an equal share with the son of the *Brāhmaṇi*.

## CLIX.

GO'TAMA:—IF there be sons similarly circumstanced and produced by a *Cshatriya*, and a *Vaisya*, as the virtuous *Cshatriya* would receive an equal share with the son of the *Brāhmaṇi*, so shall the son of the *Vaisya* have an equal share with the son of the *Cshatriya*; and so likewise if they be sons of a *Cshatriya* father.

claim of seniority in right of primogeniture and good qualities? For there is no argument to such an effect, and MENU in fact mentions, that a *Súdra* can have no wife of a different class, as a reason for equal partition; else it would be impertinent to insert a precept concerning marriage, that a *Súdra* alone can have no other wife but one of his own class, under the title of inheritance. Accordingly the maxim delivered by GÓTĀMA (CLX), that the son of a *Vaiśya* by a *Súdrā* woman shall, if virtuous, have an equal share with the son of the *Vaiśyā* wife, is pertinent. The virtuous *Súdra* shall not receive an additional allotment in token of respect, if a superior brother be living: it is proper to affirm, that he can only have such a share with a brother of equal class. Thus some lawyers expound the law, and SRI' CRĪSHNA TERCA'LANCA'PA concurs in that opinion. But VĀCHESPATI BHATTĀ'CHA'RĀYA holds, that MENU enjoins equal partition among the sons of a *Súdra*, merely to deny the portion of an eldest son in right of primogeniture alone, not to deny such an allotment in right of pre-eminent virtue; for VRĪHASPATI propounds the reason of it without discriminating classes, "he is venerable like their father" (XLV). CULLU'CABHATTĀ, JI MU'TA-VĀ'HANA and other authors deny the deducted allotment in right of primogeniture, but do not notice the allotment for pre-eminent virtue, in the case of a *Súdra*.

THE text, which denies any other wife to a *Súdra* but a woman of his own class, may be thus considered: "no other wife is ordained for a *Súdra*;" that is, no other is suggested by the *Veda*: it must not be asked, if a *Sudra*, impelled by inclination, should nevertheless marry a woman of the sacerdotal or other superior class, as a *Brahmāna* marries a woman of the servile class, and a son be born of that marriage, what shall be his share? Marriages from inclination, or in obedience to the law, are authorized in the direct order of the classes, but on no account in the inverse order. Consequently a marriage, not authorized either by recorded, or by traditional, revelation, is reprehensible; and the son of such a marriage shall have no share, as will be hereafter mentioned under the head of exclusion from inheritance. The exposition of CULLU'CABHATTĀ and the rest is accurate.

THE text is thus explained in the *Retnācara*: if the Brāhmaṇa leave no son by his Brāhmaṇī wife, but leave two sons of other tribes, one by a Cshatriyā, the other by a Vaiśyā, the son of the Vaiśyā, being virtuous, shall have an equal share with the son of the Cshatriyā, who is his junior and is deficient in virtue, but without the deducted portion of an eldest son, in like manner as the son of the Cshatriyā has, in similar circumstances, an equal share with the son of the Brāhmaṇi. Consequently the share of the son born of the Brāhmaṇi, as mentioned in the preceding text, is merely an example. "And so likewise if they be sons of a Cshatriya father;" if there be two sons of a Cshatriya, one by a Cshatriyā woman, the other by a Vaiśyā, and they be similarly circumstanced, the rule of partition is the same.

## CLX.

**GO'TAMA:**— THE very same rule exists in regard to two sons of a Vaiśya, one by a Vaiśya woman, the other by a Sūdra.

"THE very same rule" alludes to that, which has been delivered by BAUDHA'YANA; it declares a title to the portion of an eldest child: if the son of a woman equal in class be junior, and also deficient in virtue, while another younger brother is virtuous, they shall have equal shares.

The *Retnācara*.

THAT is questionable; for VRĪHASPATI ordains equal participation then only, when the son of inferior birth is superior in age and good qualities: it seems advisable to explain the terms of this text separately, "elder by birth, and endued with good qualities;" but why should that be done when the same conclusion may be obtained by other means? The difficulty is removed by considering the phrase in the text of GO'TAMA, "being endued with good qualities," as a mere instance which includes the notion of one senior in age.

By the expression "a hundred sons," in the text of MENU (LXVI), this meaning is conveyed; if a Sūdra have even a hundred sons, allotments are not dissimilar, as they are when a Brāhmaṇa leaves four sons. Consequently seniority in right of class does not exist in this case; but what should bar the claim

claim of seniority in right of primogeniture and good qualities. For there is no argument to such an effect, and *Menus* in fact mentions, that a *Sudra* can have no wife of a different class, as a reason for equal partition, else it would be impertinent to insert a precept concerning marriage, that a *Sudra* alone can have no other wife but one of his own class, under the title of inheritance. Accordingly the maxim delivered by *GOTAMA* (CLX), that the son of a *Vaisya* by a *Sudra* woman shall, if virtuous, have an equal share with the son of the *Vaisya* wife, is pertinent. The virtuous *Sudra* shall not receive an additional allotment in token of respect, if a superior brother be living. It is proper to affirm, that he can only have such a share with a brother of equal class. Thus some lawyers expound the law, and *SRI' CRISHNA TERCA' LANCA' PA* concurs in that opinion. But, *VACHESPATI BHATTA' CHARIA* holds, that *Menus* enjoins equal partition among the sons of a *Sudra*, merely to deny the portion of an eldest son in right of primogeniture alone, not to deny such an allotment in right of pre-eminent virtue, for *VRIHASPATI* propounds the reason of it without discriminating classes, "he is venerable like their father" (XLV). *CULLU' CABHATTA*, *JIVUTAVAHANA* and other authors deny the deducted allotment in right of primogeniture, but do not notice the allotment for pre-eminent virtue, in the case of a *Sudra*.

THE text, which denies any other wife to a *Sudra* but a woman of his own class, may be thus considered "no other wife is ordained for a *Sudra*," that is, no other is suggested by the *Veda*. It must not be asked, if a *Sudra*, impelled by inclination, should nevertheless marry a woman of the sacerdotal or other superior class, as a *Brahmana* marries a woman of the servile class, and a son be born of that marriage, what shall be his share? Marriages from inclination, or in obedience to the law, are authorized in the direct order of the classes, but on no account in the inverse order. Consequently a marriage, not authorized either by recorded, or by traditional, revelation, is reprehensible, and the son of such a marriage shall have no share, as will be hereafter mentioned under the head of exclusion from inheritance. The exposition of *CULLU' CABHATTA* and the rest is accurate.

## CLXI.

*Vṛīhaspati*:—LAND, received as the reward of sacred literature, must never be given to the son of the *Cshatriya* or other wife of inferior class; even if his father give it to him, the son of the *Brāhmaṇi* may, nevertheless, resume it after his father's death.

## CLXII.

*Vriddha Menu*:—THE sons of the *Brāhmaṇi* shall take the land which descends as a holy heritage; but all the sons by women of twice-born classes shall succeed to the house and field successively inherited from ancestors.

‘LAND received as the reward of sacred literature is the same with land descending as a holy heritage.’ This remark of *Jīmuṭavaṇa* is founded on the coincidence of the text of *Vṛīhaspati*. He thus explains the term used in the text: “holy” alludes to the *Vēdā*, and signifies the study of it and knowledge of its sense by which gifts are obtained. *Niṭṭler* should this be given to a son of inferior birth, nor the land, which has been obtained through the pious veneration of the giver, as suggested by *Menu*; for that is in the nature of a pious oblation.

## CLXIII.

*Menu*:—To *Brāhmaṇas* returned from the mansions of their preceptors, let him (*the king*) show due respect; for that is called a precious unperishable gem, deposited by kings with the facerdotal class.

‘OR this is forbidden by the one; that by the other. All land belonging to a priest is not a holy heritage: for the text recognises the claim of all sons by women of twice born classes, to the field inherited from ancestors, and only excludes the son of a *Sūdra* woman.’

A DISTINCTION is admitted between pious oblations and simple gifts. A donation consists in relinquishment vesting property in another after de-

vesting the right of the owner, and that is characterised by the words "I give," or others to that effect but a pious oblation consists in a grant for use, and is characterised by terms of humble salutation, and a thing, which is offered as a pious oblation, must not be appropriated by the giver himself, for the contrary practice occurs in oblation to deities. If the offering be made to inanimate deities, after allowing a period for *supposed* enjoyment by the *idol*, such as one day and night, it must be given to *Brahmanas* but, if the offering be made to the *Brahmana* himself considered as a divinity, it is long enjoyed by him Such, it is said, is JI'MU'TAVAHANA's opinion, but that is futile; for, were it true, the property would escheat to the king after the death of the priest, in honour of whom the offering was made his sons would therefore be unentitled to the succession, and they could not have even a contested claim

Is it not the purpose of a pious oblation, that it shall be enjoyed by him, in honour of whom the offering is made? Now that is attained by a single act of fruition, for it is a rule, that the intention of the law, once fulfilled, is completely answered hence may not land be resumed by the king on a subsequent day? It should not be objected, that, were it so, why should he not resume it for his own benefit? Since the law permits consecrated things to be given to no other, he ought to deliver the offering to a priest, it is therefore improper to resume it for his own benefit Nor should it be objected, that because the same person is in this case the priest and the *supposed* divinity, he is only entitled to long possession Were it so, the right of the priest's son to enjoy it after his demise, as his father's representative, would be contested. Nor should it be objected, that the priest, in honour of whom the oblation was made, becoming by death similar to an inanimate deity, the king may deliver it to any priest whomsoever He and his issue are authorized to enjoy it, as land given to a daughter for her subsistence is enjoyed by her and her issue

To the question proposed, the answer is why should it not be acknowledged as a gift, for the term demonstrative of respect is irrelevant in any other sense but that of donation? In fact, when provision is made for the maintenance of a daughter, that being given for the support of her and her issue

Issue, it is also enjoyed by her descendants after her demise. But this case is not similar, for the pious oblation is made in honour of one person alone. To this some reply, acceptance of a thing relinquished with a view to the merit arising from that relinquishment constitutes the receipt of a present ; the relinquishment of a thing with a view to the enjoyment of it by another person, whence merit shall accrue to the offerer, is an act demonstrating pious veneration; hence relinquishment only is denoted by the respectful term, *with which the oblation is presented*; it does not extend so far as to vest property in the other. The fourth case only denoting the purpose of allowing enjoyment to the man, in honour of whom the oblation is to be made, he is not donee as usually signified by the dative case; but that case is here used under another rule. What is offered as a pious oblation, is as it were unowned property; but, being once enjoyed, the possessor gains a title by occupancy, and therefore it shall not be taken by any other person; this is established upon the consequence of the act. But after the demise of the grantee, it shall be enjoyed by his descendants, and no others.

‘ Or, this is forbidden by the one; from this land, received as a pious oblation, the sons of inferior birth are excluded by the one, namely by Mēnu. (CLXII. and CLXIII.); from land received as a present, they are excluded by the other, namely by VRIHASPATI. The sense (in the gloss on v. CLXII.) is literal; for the term (*brāhmaṇa*) is explained in the dictionary of AMERA, *The Vēdas, abstract essence, devotion, GOD, BRAHMĀ, priest, lord of created beings.* The commentator obviates the supposition that “holy heritage” may intend generally the heritage of a *Brāhmaṇa*, by adding, “ all

it must be also affirmed, that the son of a *Súdra* man inherits land appertaining to his own father; but a *Súdra* is alone excepted in that text. In proof of this the following verse is cited by JÍMU'TAVÁHANA:

## CLXIV.

**VRÍHASPATI:**—THE son of any twice born man by a woman of the servile class is not entitled to partake of his landed property; he, who is born in an equal class, shall take the whole: thus is the law settled. BEGOTTEN on a woman of equal class, or born in the same class with his father. Land being mentioned generally, it appears that the son of the *Súdra* wife shall not participate therein, whether it have been received in a present or otherwise. Land, not received in a present, is that which is acquired by purchase or the like. JÍMU'TAVÁHANA concurs in that exposition; but it must be remembered, that the sons of the *Cshátriya* and *Vaisya* wives shall have a share of the land, which has been acquired by purchase and the like.

The phrase, expounded "land which descends as a holy heritage," may be explained land accruing by gift on some account peculiar to a priest; it therefore comprehends the assisting to sacrifice, teaching the *Védas*, and receiving gifts from a pure-handed giver. The delivery of land acquired by purchase is not peculiar to a *Bráhmaṇa*, but concerns all classes. The delivery of land acquired by the acceptance of a gift concerns a *Bráhmaṇa*; for the law declares, "A *Bráhmaṇa* may acquire wealth by assisting to sacrifice, by teaching the *Védas*, and by receiving presents;" and the means of subsistence prescribed to the *Bráhmaṇa* are forbidden to others.

**MENU:**—A MAN of the lowest class, who, through covetousness, lives by the acts of the highest, let the king strip of all his wealth and instantly banish.

A *Cshátriya* sometimes practices mendicity on failure of all other means of subsistence, and merely to preserve life; but it is not possible, that his sons

issue, it is also enjoyed by her descendants *after her demise*. But this case is not similar, for the pious oblation is made in honour of one person alone. To this some reply, acceptance of a thing relinquished with a view to the merit arising from that relinquishment constitutes the receipt of a present; the relinquishment of a thing with a view to the enjoyment of it by another person, whence merit shall accrue to the offerer, is an act demonstrating pious veneration: hence relinquishment only is denoted by the respectful term, *with which the oblation is presented*; it does not extend so far as to vest property in the other. The fourth case only denoting the purpose of allowing enjoyment to the man, in honour of whom the oblation is to be made, he is not donee as usually signified by the dative case; but that case is here used under another rule. What is offered as a pious oblation, is as it were unowned property; but, being once enjoyed, the possessor gains a title by occupancy, and therefore it shall not be taken by any other person; this is established upon the consequence of the act. But after the demise of the grantee, it shall be enjoyed by his descendants, and no others.

Or, this is forbidden by the one; from this land, received as a pious oblation, the sons of inferior birth are excluded by the one, namely by MENU (CLXII and CLXIII); from land received as a present, they are excluded by the other, namely by VR̄IHASPATI. The sense (in the gloss on v. CLXII) is literal; for the term (*brabman*) is explained in the dictionary of AMERA, *The Vēdas*, abstract essence, devotion, GOD, BRAHMĀ, priest, lord of created beings. The commentator obviates the supposition that "holy heritage" may intend generally the heritage of a *Brāhmaṇa*, by adding, "all land belonging to a priest is not a holy heritage." For the text of MENU (CLXII) declares the general right of all sons, whether *Brāhmaṇas*, *Cshatriyas*, or *Vaisya*s, to succeed to the land belonging to a *Brāhmaṇa*; that text being thus explained, the *Brāhmaṇa*, *Cshatriya*, and *Vaisya* shall succeed to the house which has successively descended from the paternal grandfather to the father, and from him to his sons. It should not be affirmed, that this text propounds the right of a son to succeed to the property belonging to a *Brāhmaṇa*, *Cshatriya*, and *Vaisya* respectively. The property of a *Brāhmaṇa* alone is premised in the first part of that text (CLXII); and the precept, that twice born men shall succeed to their fathers, would be unmeaning, since

it must be also affirmed, that the son of a Súdrá man inherits land appertaining to his own father; but a Súdrá is alone excepted in that text. In proof of this the following verse is cited by JÍMBUTÁVÁHANA:

## CLXIV.

VRÍHASPATI:—THE son of any twice born man by a woman of the servile class is not entitled to partake of his landed property; he, who is born in an equal class, shall take the whole: thus is the law settled. BEGOTTEN on a woman of equal class, or born in the same class with his father. Land being mentioned generally, it appears that the son of the Súdrá wife shall not participate therein, whether it have been received in a present or otherwise. Land, not received in a present, is that which is acquired by purchase or the like. JÍMBUTÁVÁHANA concurs in that exposition; but it must be remembered, that the sons of the Cshatryá and Vaifyá wives shall have a share of the land, which has been acquired by purchase and the like.

The phrase, expounded "land which descends as a holy heritage," may be explained land accruing by gift on some account peculiar to a priest; it therefore comprehends the assisting to sacrifice, teaching the Védas, and receiving gifts from a pure-handed giver. The delivery of land acquired by purchase is not peculiar to a Bráhmaṇa, but concerns all classes. The delivery of land acquired by the acceptance of a gift concerns a Bráhmaṇa; for the law declares, "A Bráhmaṇa may acquire wealth by assisting to sacrifice, by teaching the Védas, and by receiving presents;" and the means of subsistence prescribed to the Bráhmaṇa are forbidden to others.

MENU:—A MAN of the lowest class, who, through covetousness, lives by the acts of the highest, let the king strip of all his wealth and instantly banish.

A Cshatryá sometimes practises mendicity on failure of all other means of subsistence, and merely to preserve life; but it is not possible, that

should thereby, gain riches. CHANDI'SWARA also explains the term used in the text (CLXII), land gained by assisting to sacrifice and the like. What is received as a pious oblation, is also comprehended in the same term.

OTHERS argue from the text admitting the title of the *Cshatriya* and *Vaisya* to land inherited from ancestors, without any specified exception, that the sons of the *Chatriya* and *Vaisya* wives succeed to land, which was originally received in a present by the paternal-grandfather or remoter ancestor, and had devolved on the father in right of affinity. Accordingly land, which is acquired by the father, through the acceptance of a present, shall belong to the son of the *Brahman*, not to the son of the *Cshatriya* or other inferior wife, as is observed by JIMUTAVAHANA! How then do the sons of the *Cshatriya* and *Vaisya* succeed to land, which was acquired by purchase? Because there is no prohibition: "all the sons of women of twice born classes &c. is merely a repetition; the former part of the text contains the direct precept. A secondary sense should not therefore be admitted; for it is weaker than the primary sense. The last part of the text of VRIHAS-PATI (CLXI), "even if his father give it to him &c." supposes partition made by the father. Therefore the son of the *Cshatriya*, or other inferior wife, cannot by any means have property, founded on consanguinity, in land which was gained by modes of acquisition peculiar to a priest. Then must it not be considered as a waif? Not so; for it must be affirmed, that the father's property was not devested; else it would not be said, that "the son of the *Brahman* may resume it after his father's decease;" for, otherwise, even a stranger might seize it. If his father give it to him out-right for the sake of the merit *accruing* from gifts, or for protection, or through favour, what shall be the consequence? It becomes the absolute property of the *Cshatriya* or other inferior son; for gift operates the divestiture of the former owner's property; and if none vested in another owner, it would be a waif. It is not reasonable to say, that property is not in this case devested by donation; for no limitation is on any account admitted to the valid gift of an owner who is not disabled by insanity or the like. Thus some expound the law.

## CL.XV.

DI'VALA: — A *Nyshiti*, being the only son of a *Brahmana*, shall

shall have a third part of his estate; two shares shall be taken by the kinsman remote or near, who performs the obsequies for the deceased;

2. On failure of kinsmen, those shares devolve on the preceptor, or on the pupil, who performs the obsequies; in the utmost difficulty *to find an heir*, let those shares be allotted to any person sprung from the same original stock.

A *Nisháda* is born from a *Bráhmaṇa* on a *Súdrá* wife, as mentioned under the title of mixed classes.\* The whole estate being divided into three parts, he shall take one part, and *the other* two belong to the near kinsman connected by the funeral cake; or, on failure of him, to the remoter kinsman. The distinction between near and remote kinsmen will be explained. It may be thus elucidated; a near kinsman, connected by the funeral cake, is a father or his descendant and so forth; and the remoter kinsman is the grandfather's grandfather, and the rest. He must be of the same class with the deceased, else he would not be preferable to the son. On failure of remote kindred, the preceptor succeeds; he alone performs the obsequies and celebrates the *śraḍḍha*. On failure of him, the pupil. In the utmost difficulty, on failure of all heirs from the near kinsman to the pupil, let those shares be given to any person sprung from the same original stock with the father of the *Nisháda*. The *Retnácarā*, *Jīvítavaṇa* and the rest concur in this exposition; the *Párijáta* adds, this concerns a virtuous *Nisháda*. The object of that remark is to remove the apparent inconsistency with the following text.

#### CLXVI.

**MENU:**—THE son of a *Bráhmaṇa*, a *Cshatriya*, or a *Vaisya*, by a woman of the servile class, shall inherit no part of the estate, unless he be virtuous; nor jointly with other sons, unless his mother was lawfully married: whatever his father may give him, let that be his own.

CONSEQUENTLY this text of MENU relates to the vicious son of a *Súdrá* woman. But it is proper to consider it as only applicable when there is a son of a twice born class; and it thus coincides with the text of the *Mahábhárata* above cited (CXLIII 4): and on this construction the son of a *Súdrá* wife has a specifick portion then only, when partition is made by his father; but after his father's demise, he is excluded from participation, if he have a twice born brother; if there be none such, he shall take a third part: there is no difficulty on this interpretation. Accordingly MENU, having declared partition among sons of the four classes, and, in answer to the question whether a greater portion may be given to the son of the *Súdrá* on account of his filial piety or the like when partition is made by the father, having denied that greater portion (CLXVII), proceeds to deny him even the tenth part, when partition is made after the death of the father (CLXVI).

## CLXVII.

**MENU :—BUT,** whether the *Bráhmaṇa* have sons, or have no sons, by wives of the three first classes, no more than a tenth part must be given to the son of a *Súdrá*.

THIS tenth part is ordained when there are four sons of the four different classes; for it corresponds with a former text (CXL). In like manner it is reasonable, that a *Súdrá* son should receive, in right of a certain degree of virtue, one share of the estate divided into seven parts and a half; for that coincides with another text (CXXXIX 4). Never is a tenth part only given to the son of a *Súdrá* wife, when there is no son by the *Bráhmaṇa*; for that would contradict the text of VISHNU (CLIII). Again the prohibition contained in a text of VRĪHASPATI (CLXIV) concerns a *Bráhmaṇa*, and relates to partition by a father. Many different rules being laid down according to the difference of class, but this containing no specified limitation, land cannot be properly included in the third part, which is received by the son of a *Súdrá* having no brother of another class. As for the supposition, that the text of MENU (CLXVI) relates solely to the son of a *Súdrá* woman not lawfully married, it is erroneous; for the *Mahábhárata* declares, that even the son of a *Súdrá* lawfully married is not entitled to claim any portion

portion unless it be given by his father (CXLIII 4) How can the expression, " whether the Brāhmaṇa have sons or have no sons," be justified, for Viṣṇu\* authorizes a greater allotment than a tenth part, if he have no son by wives of the three first classes. A tenth part here intends the share prescribed for a son of that class, as above-mentioned hence, if the priest have no other sons, a third part or the like, to be substituted in place of the tenth part, shall be allotted to the son by the Sūdrā. Thus some authors expound the law.

CHANDEŚWARA, MISRA, CULLU'CABHATTA, VIJAYĀKEŚWARA and the rest explain the text of MĒNU (CLXVII), whether the priest have sons by wives of twice born classes, or have no such sons LACSHMI'DHARA remarks, if the father indulgently give any thing to his son by a Sūdrā woman, he shall not give more than a tenth part According to this opinion, says CHANDEŚWARA, the phrase, " a son by a woman of the servile class shall inherit no part of the estate," must signify, that he shall have no part of the inheritance unless it be given to him by his father The gloss on both lines expresses, ' if the father give any thing to his son by a Sūdra,' it is not distinguished whether a share or an indulgent gift be meant it must therefore be understood as intending a share, for in the case of indulgent gifts to other sons, no specifick sum is ordained, it is easy to establish the coincidence of this text with others by the equality of his regular share, and it is inserted in MĒNU's code, after premising the allotment of a share. To reconcile the apparent contradiction of saying, that " a son by a woman of the servile class shall inherit no part of the estate," while it is mentioned both before and after this text, that he shall receive such part of the estate as is allotted to him by his father, HELĀYUDHA and the Pāriyata supply the text with the words, " unless given to him by his father " Participation is forbidden by the first sentence (CLXVI), alluding to a son very deficient in good qualities and born of a Sūdrā woman lawfully married, it is forbidden by the second sentence, alluding to a son deficient in good qualities and born of a Sūdrā woman not lawfully married Hence, " whatever his father may give him, let that be his own," meaning that which his father may give him, through favour, whether it be less, or more, than a tenth

\* I find no text of Viṣṇu to that effect Perhaps it may be an error of the transcriber, writing Viṣṇu for Devala T

part. But a father, who has no other son, must give a third part of the remainder, after deducting his own allotment, to a virtuous son by a *Súdra* woman lawfully married, and he shall take the residue for himself. The very same principle should be admitted in partition made after the death of the father. JIMUTAVAHANA considers the text of MENU (CLXVII) as forbidding the further participation of one, who has already received a tenth part through his father's indulgence. VIJNYANESWARA delivers a similar exposition. JITENDRIYA expounds both texts as follows: "however great his father's partiality, he shall have no other portion than a tenth part." According to his interpretation, the text, "no more than a tenth part must be given" (CLXVII), appears to relate to what is given through favour. But GUILLUCABHATTĀ reconciles the apparent contradiction in the texts of MENU (CLXVI and CLXVII), by different cases according to the degree of virtue, and according as the mother was, or was not, lawfully married.

## CLXVIII.

VRITHASPATI:—THE virtuous and obedient son born of a *Súdra* woman unto a man who leaves no legitimate offspring, shall take a provision for his maintenance, and the kinsmen shall inherit the remainder of the estate.

This, says CHANDESWARA, relates to the son of a woman not lawfully married; for the subject is an unmarried woman. Else it would contradict the text of DEVALA above cited (CLXV 1).

## CLXIX.

GOTAMA:—A son by a *Súdra* woman; born unto a man who leaves no legitimate offspring, shall, if he be strictly obedient like a pupil, receive a provision for his maintenance.

If he be strictly obedient like an apprentice; then shall the son of a *Súdra* woman receive a provision for his maintenance out of the property of his father, who leaves no legitimate issue. "Apprentice" signifies a pupil.

The

The author of the *Retnacara* has this exposition. ‘the son begotten on a *Súdra* woman not lawfully married, by a man belonging to one of the three first classes, who leaves no son by a woman of a twice born class, shall receive a provision for his maintenance, (that is, some trifles as a stock whereon he may earn a livelihood by agriculture or the like), provided he be strictly obedient, or show due respect, like a pupil and whatever had been given to him by his father, must also be delivered, as ordained in the following text’

## CLXX.

**SANC'HA** and **LIC'HITA**.—A son by a *Súdryá* woman does not succeed to the paternal estate, whatever his father gave him, that alone shall be his share, but let the father also give him a bull and a cow, some black iron, and any black grain excepting *tila*.

**CHANDESWARA** also expounds this text as in effect relating to the son of an unmarried *Súdra*. The text of  **MENU** (CLXVII), as some lawyers remark, may be also expounded as relating to the same subject.

## CLXXI.

**GOTAMA** —Sons, produced by women in the inverse order of the classes, shall have a similar allotment to that of the son produced by a woman of the servile class.

A son produced by a woman of another class shall have a mere provision for his maintenance, like one produced by a woman of the servile class, if he be strictly obedient to his parent, as a pupil to his preceptor

**CHANDESWARA.**

‘OTHER class’ intends mixed classes. This is grounded on the text, which expresses, “All children, produced by illegal connexions, are declared to have the same duties with those of the servile class”. But a *Murdabbhyashicá* and the rest are not treated as women of the servile class. In another place the same commentator delivers this gloss ‘to sons produced by

women in the inverse order of the classes, a subsistence shall be allotted in the same manner in which it is assigned to the son of a *Sudra*, provided they be strictly obedient to their parents.' A woman married in the inverse order of the classes is one, who is of a class superior to that of her husband; or one, who has been espoused by him before another wife of a class superior to her own, a *Cshatriya* before a *Brabman*. MISRA says, 'a son begotten by a *Sudra* or other man of inferior class, on a *Vaisya* or other woman of superior class, shall receive the means of livelihood, that is, stock for agriculture and the like, such as a plough, a ploughshare and so forth.' VISHNU propounds the share of a virtuous son begotten by a *Cshatriya* or *Vaisya* on a *Sudra* lawfully married.

## CLXXII.

VISHNU:—A *Sudra*, being the only son of a twice born man, shall take half his father's estate, the second half shall be appropriated in the same manner with the estate of one, who leaves no male issue.

ON this text it is remarked in the *Retnacara*, that a *Cshatriya* or *Vaisya* is here intended by the term "twice born man," with an exception to the *Brabman*; for *DEVALA* ordains the third part for the son of a priest by a woman of the servile class' (CLXV). It might be reconciled by referring the texts to the cases of a virtuous son, and of one deficient in virtue. The ample discussion of this subject would swell the volume unnecessarily, since the marriage of a woman unequal in class is forbidden in the *Cahage*.

## CLXXIII

*Vrihat Narediya puraná* —UNDERTAKING sea voyages to circumnavigate the ocean, the carrying of a waterpot by a householder, the marriage of twice-born men with damsels unequal in class,

PREVISING these and other practices, it adds,

The wise have declared, that these practices must be avoided in the *Cahage*.

"UNDERTAKING sea voyages," circumnavigating the ocean "The carrying of a waterpot," the carrying of it by a householder, as directed in ancient law, "Two sacred threads must be worn, and a waterpot full of water must be carried" The learned so expound the text

*Aditya purana* —THE marriage of twice born men with damsels not of the same class; the slaughter, in a religious war, of *Brahmanas*, who are assailants with intent to kill,

Premising these and other parts of law, it proceeds,

These parts of ancient law were abrogated by wise legislators, as the cases arose, at the beginning of the *Cali* age, with an intent of securing mankind from evil:

The injunctions of infallible legislators are of equal authority with holy writ.

Does it not appear from the expression, "abrogated by wise legislators, as the cases arose," that the prohibition was not suggested by the scripture; and is it not consequently improper? Therefore it is added, "the injunctions of infallible legislators &c" The term translated "injunction," literally signifies promise, for amongst other senses, AMERA states the term (*sāvaya*) as synonymous with *samit*, which he explains a promise or contract "Infallible legislators" are such as are free from all defects These defects are, natural ignorance, through which, for example, the Ganges may be mistaken for a vulgar stream, inadvertency, through which a man may err in regard to the existence of a thing, even though it lay before him, wilful deceit, as when he affirms, that a thing is not, though it really be, and weakness of organs, which prevents his clear perception of small objects. The words of a man free from these defects must be respected like holy writ, for, not proceeding from a fallible man, they are similar to the precepts of the *Veda*

## CLXXIV.

YĀJNYAWALCYA :—A SON, begotten by a man of the servile class on his female slave, may receive a share by his father's choice ; or after the death of the father, the brethren shall allot him half a share.

" By his father's choice," that is, by the will of his father, he may obtain a share in the distribution of the estate : this relates to partition made by the father. It is hereby intimated, that a share must necessarily be given to sons and other descendants of a wife equal in class. The son of a *Sūdra* by a female slave, or other *Sūdra* woman not lawfully married, shall, with his father's consent, have an equal share with other sons.

JIMUTAVAHANA.

CONSEQUENTLY this is also intimated ; if the father said, " let an equal share be given to this son," then the other sons shall give him an equal allotment when partition takes place. After the death of the father, if no such will had been declared, the brethren, born of a wife legally married, shall allot him half a share ; that is, half of such share as would have been assigned, had his mother been legally married. Consequently a son by a female slave, not superior in class to her *Sūdra* master, shall obtain the moiety of a full share. Such is the opinion delivered in the *Mitāślāra* and *Retnācara*. The same legislator propounds the rule when there is no son by a woman lawfully married.

## CLXXV.

YĀJNYAWALCYA :—SHOULD he have no brother, he shall take the whole, unless there be a daughter's son.

If there be no son by a woman lawfully married, nor a daughter's son, the son of a female slave shall take the whole estate of the *Sūdra* father. Such is the exposition delivered in the *Retnācara*. MISRA explains the text similarly. *SŪLĀPA'NI*, *RAGHUNĀNDANA* and the rest expound " a share" (CLXXIV), an equal allotment with the rest of the brethren. It is consequently intimated, that an unequal distribution, unauthorized by the

law, shall not be made among the sons of a woman legally married. But, if there be a daughter's son, then, since he is a legitimate descendant, and since the son of a female slave is produced by a woman not legally married, it is proper they should have equal shares. Such is the opinion of RAGHUNANDANA, and JIMUTAVAHANA delivers a similar exposition.

## CLXXVI.

**MENU:**—A SON begotten by a man of the servile class on his female slave, or on the female slave of his male slave, may take a share of the heritage, if permitted. thus is the law established.

"ON the female slave of his male slave," on the female slave of his servant.

The *Calpatera.*

CULLUCA BHATTA has a similar gloss. But CHANDE'SWARA explains "his female slave," one who falls within the description of slaves made captive under a standard and the rest,\* "the female slave of a male slave," his female slave of such a description, on whom a son is begotten by a male slave, without being married to her. Both may be admitted to participate in the heritage. Thus is the law settled.

## CLXXVII.

**MENU:**—A SON, begotten through lust on a Sudra by a man of the priestly class, is even as a corpse though alive, and is thence called in law a living corpse.

THIS, says JIMUTAVAHANA, relates to the son of a woman not legally married. But CULLUCA BHATTA considers it as relating to the son of a woman lawfully married being incapable of fulfilling the purpose of obsequies for his father, and so forth, he is even as a corpse

\* Book III, Chap I, v XIX.

## CHAPTER IV.

### ON LEGITIMATE AND ADOPTED SONS.

#### SECTION I.

##### ON THE SEVERAL MODES OF FILIATION.

**W**ITH the intent of explaining particularly the right of sons legitimate, or adopted, to succeed to their father's estate, they are first described.

#### CLXXVIII.

**MENU:**—Of the twelve sons of men, whom MENU, sprung from the self-existent, has named, six are kinsmen and heirs; six not heirs, *except to their own father*, but kinsmen.

2. THE son begotten by a man himself *in lawful wedlock*, the son of his wife begotten *in the manner before mentioned*, a son given *to him*, a son made or adopted, a son of concealed birth or *whose real father cannot be known*, and a son rejected by his natural parents, are the six kinsmen and heirs;
3. The son of a young woman *unmarried*, the son of a pregnant bride, a son bought, a son by a twice married woman, a son selfgiven, and a son by a *Sudra*, are the six kinsmen, but not heirs *to collaterals*.

MENU, sprung from the self-existent BRAHMA, and first of the fourteen

MENUS, among those twelve sons of men, whom he has named, the first six are pronounced kinsmen and heirs to collaterals the result is, that, as kinsmen, they offer the funeral cake and water to *Sapindas* and *Samāñbdacas*, and as heirs, they succeed to the heritage of their collateral relations, on failure of male issue, as well as to the estate of their own father. The last six may not take the heritage of any, except their own father, but they participate in his wealth, for it is declared generally without any exception, that *sons* inherit the estate of their father (CCXXIII a). When learned priests are mentioned as heirs to all persons on failure of kin, then, indeed, consanguinity is not the ground of their succession, for there is no other ground but their claim as learned priests. These on the contrary are kinsmen, and therefore perform the duties imposed by that relation, offering water and celebrating other rites.

CULLU'CABHATTA

But *ME'DHA'TIT'HI*, explaining the compound used in the text by the negative superadded to the apposition called *duandua*, says, "six are neither 'heirs nor kinsmen'" they are not heirs, except to their own fathers. That is wrong, for *BAUDHA YANA* mentions them as kinsmen.

### CLXXIX.

*BAUDHA YANA*:—*CONSANGUINITY*, denoted by a common family appellation, belongs to the son of an unmarried girl, the son of a pregnant bride, a son bought, a son by a twice married woman, a son self-given, and a son of a priest by a *Súdrá*.

And, in fact, *YĀJÑAVALCEYA*, after premising the twelve sons, says, "on failure of those first mentioned, the next in order give the funeral cake and claim the heritage" (CLXXXIX). Hence it is evident, that all may offer the funeral cake for their own fathers; and the difficulty is reconciled by not admitting their right of offering it for any other. How can it follow from the terms of the text (CLXXXV), that they are kinsmen to collaterals? There is no rule, for all, who partake of the same family name, offering the funeral cake to collaterals; since it would follow that one, who is not related within the degree of a *Sapinda*, might offer it, even though he were an unconnected stranger.

CLXXX.

## CLXXX.

BAUD'HAYANA—PARTICIPATION of wealth belongs to the son begotten by a man himself *in lawful wedlock*, the son of his appointed daughter, the son begotten on his wife *by a kinsman legally appointed*, a son given, a son made *by adoption*, a son of concealed birth, and a son rejected *by his natural parents*.

THIS right of succession, from which the six first mentioned are excluded, must be understood of succession to the estate of any but their own fathers. Of whose family name do the six, named with the son of the body (CLXXX), partake; of their natural, or their adoptive father's? The answer is, they only claim the family of him, whose son each of them becomes, for sons, inferior to these, namely the son of an unmarried girl and the rest, claim the family of their adoptive father; why then should not the rest have a similar claim? The son of the body, of course, belongs to the same race *with his father*, and MENU, in speaking of a son given, explicitly declares, that he must never claim the family of his natural father.

## CLXXXI.

MENU:—A GIVEN son must never claim the family and estate of his natural father: the funeral cake follows the family and estate, but of him, who has given away his son, the funeral oblation is extinct.

THE term "funeral oblation" intends that which is made for a *śāśra*. If a son may not claim the family of his natural father, he may surely claim that of his adoptive parent. It is accordingly declared in the *Caśicā purāna*, after premising "the son begotten by a man himself in lawful wedlock, the son of a wife begotten by an appointed kinsman, a son given, a son made *by adoption* and the rest," that their investiture and other ceremonies must be performed by their own family.

## CLXXXII

*Cāśicā purāna*.—HE, O lord of the earth! on whom the ceremonies

monies should be performed under the family-name of his father, is not deemed a son until the ceremony of tonsure have been completed ; he becomes the son of another, *under whose family-name it is performed* :

2. Sons given and the rest, when the ceremonies of tonsure and the like have been performed on them by the *adopter's* own family, are deemed adopted sons ; any other is called a slave.

IN the first text "father" signifies the natural parent ; "another" signifies any other *besides the natural father*. Affiliation therefore depends on the ceremony of tonsure, it does not require the several solemn rites, from the section of the navel string, until the child be fed with rice : and that ceremony of tonsure is valid, even when performed at the season of investing the child with the mark of his class ; but adoption is limited to the fifth year.

### CLXXXIII.

*Cólicá purána* :—BUT after their fifth year, O king ! sons given and the rest must not be adopted ; let the adopter take a boy five years old, and first perform a sacrifice for male offspring.

THE sacrifice named in the text (*puträßhti*) shall be performed, if the adopter maintain a perpetual fire ; but *only* an oblation with holy words from the *Véda*, if he do not maintain *such* a fire ; this will be explained in its place. If a boy five years old be regularly adopted, but the ceremony of tonsure be not performed, having been deferred, according to the usage of the family, until the season of investing the child with the mark of his class ; then, should the adopter die in the interval, is this son qualified to perform his obsequies ?

SOUL argue from the letter of the text (CLXXXII 2), that, the ceremony of tonsure not having been performed by his *adopter's* own family, his affiliation is null, and therefore he is not qualified to perform obsequies. That is wrong ; for the text is propounded to declare void, the adoption

of a given son, on whom the ceremony of tonsure has been performed by the family of his natural father. Else, if all the ceremonies, including marriage, which is comprehended in the words "and the like," cannot be celebrated, the affiliation would be invalid, and he would not belong to the family of his adoptive father; and consequently the ceremony of tonsure and of investiture, even though performed in the adopter's family, would be invalid, or would be partly imperfect; and the rites could not be performed at all. Adoption alone constitutes affiliation; but the ceremony of tonsure performed by the family, to which he originally belonged, renders it essentially invalid, like a needless repetition. But his affiliation *once effected* is not cancelled by his naming his former family in performing a sacrifice, or in consecrating a pool. Birth caused by male seed and uterine blood is one ground of filiation, the second birth, by investiture and other ceremonies, is equally a ground of filiation, by whomsoever performed. When he, who has procreated a son, gives him to another, and that child is born again by the rites of initiation, then his relation to the giver ceases; and a relation to the adopter commences: this birth cannot afterwards become null by his erroneously reverting to his original family. The subject shall be further discussed. Thus some expound the law. To expatiate would be superfluous.

THE twelve sons are enumerated in the same order by MENU and BAUDHĀYANA, but in a different order by others.

#### CLXXXIV.

**GO'TAMA:**—THE son begotten by a man himself *in lawful wedlock*, the son of a wife begotten by an appointed kinsman, a son given, a son made by adoption, a son of concealed birth, and one rejected by his natural parents, are sons who inherit property.

2. THE son of an unmarried girl, the son of a pregnant bride, a son by a twice married woman, the son of an appointed daughter, a son selfgiven, and a son bought, claim the family of their adoptive fathers, and a fourth part of

*the paternal estate, if there be no son begotten in lawful wedlock, nor other superior claimant.*<sup>4</sup>

## CLXXXV.

VISHNU :—SONS are twelve : the first is the son begotten by a man himself on his own wife (*or the son of the body, for this agrees with VASISHT'HA*) ; the second is the son of a wife, begotten by a man of equal class on a widow duly appointed : she, who is given in marriage by her father with a declaration in this form, “her son shall be my son,” and she, who having no brothers, is so appointed to raise up sons to her father, though not yet given in marriage, is an appointed daughter, *and considered as the third son* : the fourth is the son of a twice married woman ; the fifth, the son of an unmarried girl ; the sixth, the son of concealed birth ; (he is son of him, on whose wife he was begotten;) the seventh is the son of a pregnant bride ; (and the son of a woman espoused while pregnant is son of the man who marries her;) the eighth is a son given and becomes the son of him, to whom he is given by his natural father or mother ; the ninth, a son fold ; the tenth, a son selfgiven ; (he is son of the man, to whom he gives himself;) the eleventh is a son rejected ; (being forsaken by his father or mother, he becomes the son of him, by whom he is received;) the twelfth is a son any how produced irregularly ; (*and he is also called ‘Saudra or a son by a Súdrá*).

Such is the order in which sons are enumerated by VISHNU ; they are enumerated in another order by SANC'HA and LIC'HITA.

## CLXXXVI.

SANC'HA and LIC'HITA :—A SON rejected by his father or mother, the son of a pregnant bride, a son given by his natural

\* The text was here cited partially ; but in subsequent sections it is quoted entire.

*parents, a son bought, a son by a 'Súdrà, and a son self-given; these six sons are not heirs to collaterals, nor to their own father jointly with other sons.*

2. THERE is an alternative in respect of partition among those, who are heirs: the son begotten in lawful wedlock, the son of a wife begotten *by a kinsman*, the son of an appointed daughter, the son by a woman twice married, the son of a young woman unmarried, and a son of concealed birth, are six kinsmen and heirs, who belong to the same race with their fathers and paternal grandfathers, *who jointly inherit the estate and offer funeral cakes, and who claim affinity with sapindas\**.

#### CLXXXVII.

HA'RITA, enumerates sons in another order:—A son begotten by a man himself on a faithful wife, the son of his wife begotten *by a kinsman*, a son by a twice married woman, the son of an unmarried girl, the son of an appointed daughter, and a son of concealed birth are heirs to kinsmen.

2. A son given *by his parents*, a son bought, a son rejected, the son of a pregnant bride, a son selfgiven, and a son made *by adoption* are not heirs to kinsmen.<sup>†</sup>

#### CLXXXVIII.

NA'REDA:—A son begotten by a man himself *in lawful wedlock*, a son begotten on his wife *by a kinsman*, the son of an appointed daughter, the son of an unmarried girl, the son of a pregnant bride, and a son of concealed birth,

2. A son by a twice married woman, a son rejected, a son

\* The latter part was not quoted in this place, but in subsequent glosses the text is cited entire T.

† See the gloss after v. CCXIX.

given by his natural parents, a son bought, a son made by adoption, and a son selfgiven, are declared to be twelve sons:

3. Among these, six are heirs to kinsmen; six, not heirs but kinsmen; their relative rank corresponds with the order, in which they are here named:
4. On the death of the father, they succeed, in their order, to his wealth; on the failure of the best, and the next best, let the inferior in order take the heritage.

#### CLXXXIX.

YA'JNYAWALCYA (after enumerating the son of the body, the son of an appointed daughter, the son of a wife begotten by a kinsman, the son of concealed birth, the son of an unmarried girl, a son by a twice married woman, a son given by his natural parents, a son bought, a son made by adoption, a son selfgiven, the son of a pregnant bride, and a son rejected) adds: — On failure of those first mentioned, the next in order give the funeral cake, and claim the heritage.

sons is distinguished by the order, in which they are enumerated.

3. ALL these adopted sons are pronounced heirs of a man, who has no son by himself begotten; but, should a son of his body be afterwards born, there is no larger portion for them by reason of seniority.
4. SUCH among them, as are of the same class *with that son*, shall have, as their share, one third of the property, *and two-thirds of it go to him*; but those of a lower class must live under him with a provision of clothes and food only.

#### CXCI.

YAMA:—TWELVE sons are named by sages, who know the principles of things; among these sons, six are kinsmen and heirs; six, not heirs but kinsmen:

2. The first is declared to be the son begotten by a man himself *in lawful wedlock*; the second, a son begotten on his wife *by a kinsman*; the third is the son of an appointed daughter; thus have the learned declared the law.
3. THE fourth is a son by a twice married woman; the fifth, a son by an unmarried girl; the sixth, a son of concealed birth in the husband's mansion: these six give the funeral cake, and take the heritage.
4. A son rejected by his father or mother, the son of a pregnant bride, a son given by his natural parents, a son made through adoption, and fifthly a son bought, and lastly he, who offers himself of his own accord;
5. These six, being of mixed origin, are kinsmen, but not heirs *except to their own father*.

given by his natural parents, a son bought, a son made by adoption, and a son selfgiven, are declared to be twelve sons:

3. Among these, six are heirs to kinsmen; six, not heirs but kinsmen; their relative rank corresponds with the order, in which they are here named:
4. On the death of the father, they succeed, in their order, to his wealth; on the failure of the best, and the next best, let the inferior in order take the heritage.

#### CLXXXIX.

YAJNYAWALCYA (after enumerating the son of the body, the son of an appointed daughter, the son of a wife begotten by a kinsman, the son of concealed birth, the son of an unmarried girl, a son by a twice married woman, a son given by his natural parents, a son bought, a son made by adoption, a son selfgiven, the son of a pregnant bride, and a son rejected) adds: — On failure of those first mentioned, the next in order give the funeral cake, and claim the heritage.

#### CXC.

DE'VALA (after enumerating the son of the body, the son of an appointed daughter, the son of a wife, the son of an unmarried girl, a son of concealed birth, a son rejected, the son of a pregnant bride, a son by a twice married woman, a son given by his natural parents, a son selfgiven, a son made by adoption, and a son bought) adds: — THESE twelve sons are considered as offspring by birth or adoption; namely, sons begotten by a man himself, sons begotten by another but fathered by him, sons acquired, and sons by their own consent:

2. Among these, the first six are kinsmen and heirs, the other six inherit only from their own father; the rank of sons

sons is distinguished by the order, in which they are enumerated.

ALL these adopted sons are pronounced heirs of a man, who has no son by himself begotten; but, should a son of his body be afterwards born, there is no larger portion for them by reason of seniority.

SUCH among them, as are of the same class *with that son*, shall have, as their share, one third of the property, *and two-thirds of it go to him*; but those of a lower class must live under him with a provision of clothes and food only.

#### CXCI.

AMA:—TWELVE sons are named by sages, who know the principles of things; among these sons, six are kinsmen and heirs; six, not heirs but kinsmen:

The first is declared to be the son begotten by a man himself *in lawful wedlock*; the second, a son begotten on his wife *by a kinsman*; the third is the son of an appointed daughter; thus have the learned declared the law.

THE fourth is a son by a twice married woman; the fifth, a son by an unmarried girl; the sixth, a son of concealed birth in the husband's mansion: these six give the funeral cake, and take the heritage.

A son rejected by *his father or mother*, the son of a pregnant bride, a son given by *his natural parents*, a son made through adoption, and fifthly a son bought, and lastly he, who offers himself of his own accord;

These six, being of mixed origin, are kinsmen, but not heirs *except to their own father*.

IN the *Cálicá purána*, sons are enumerated in the order propounded by MENU.

## CXCII.

The *Cálicá purána* :— THE son begotten by a man himself in lawful wedlock, the son begotten on his wife by a kinsman, a son given by his natural parents, a son made by adoption, a son of concealed birth, and a son rejected take shares of the heritage.

2. THE son of an unmarried girl, the son of a pregnant bride, a son bought, a son by a twice married woman, a son selfgiven, and a son by a *Súdrá* are six sons, who are *contemptible as dust*.
3. On failure of the first respectively, invest the next with filial rights.

A DISTINCTION is subjoined; But appoint not to the empire the son of a twice married woman, nor a son selfgiven, nor one born of a female slave.

ACCORDING to NÁREDA, a son rejected by his natural parents is competent to inherit, preferably to a son given; but according to VISHNU, a son given is not entitled to the heritage, to the prejudice of a son rejected by his natural parents. Similar discrepancies, in the texts of various sages, will be reconciled in another place. The nature of the affiliation must be first delivered; for, without understanding the character of their filiation, the comparative excellence of these sons cannot be discussed.

## SECTION II.

## ON THE SON BEGOTTEN IN LAWFUL WEDLOCK.

CXCIII.

VASISHT'HA:—TWELVE sons are shown in holy writ; the first is the son of the body, begotten by a man himself on his own wedded wife.

" Shown in holy writ;" by these words the admission of the law is ratified: therefore, says the legislator, we admit the authority of the scriptural precept "alone in this instance." " Begotten by a man himself," excludes the son begotten on his wife by a kinsman; and " wedded wife " excludes the wise selfgiven, who offers herself in these words, " I am thine." " The first;" since he is declared to be first in rank, he bars the succession of any other. A question, which arises on this point, will be discussed in treating of appointed daughters. " The first is begotten by a man himself on his own wife" (CLXXXV); a son, begotten on the wife of another by a man not duly appointed, falls under the description of a son by a twice married woman; he is ninth in VISHNU's text. This will be explained under its proper head. " Wedded " must be supplied; for this text coincides with that of VASISHT'HA (CXCIII).

CXCIV.

MENU:—HIM, whom a man has begotten on his wedded wife, let him know to be the first in rank, as the son of his body.

CULLU'CABHATTA has another reading of the first measure,\* but the sense is precisely the same. He thus expounds the text: " him, whom a man

\* *Svet eśteśa saṃśrīyān tu instead of saṃśrīyān tu kṛityān.*

begets on his own wife legally married; let him know to be chief in rank as the son of his body."

## CXCV.

DE'VALA:—THAT son, who is begotten by a man himself on his wedded wife, is called the son of his body, chiefly sustaining his father's lineage.

"CHIEFLY sustaining his father's lineage;" an expression of praise, because he continues the race in its superior dignity.

## CXCVI.

BAUDHA'YANA:—A SON, who was begotten by a man himself on his wedded wife of equal class; let him know to be the legitimate son of his body.

"On a wife of equal class;" this denotes, that a legitimate son is one begotten by a Brahmana on a Brahman woman. Accordingly it is inferred by CULLUCA'BHATTA, from the terms of this text, that the son of the body is one begotten by the husband himself on a woman of equal class.

## CXCVII.

SANC'HA and LIC'HITA:—LET a priest take the hand of a woman equal in class; the bodies of his ancestors are born again of her: let him figuratively address his own soul, in the person of his son.

These sages subsequently mention the form of address, " springing from successive bodies &c."

## CXCVIII.

SANC'HA and LIC'HITA:—"ANCESTORS seize the infant foetus produced from uterine blood; thou, my soul, art born again, that thou mayest here sleep in body.

2. "FOR the benefits conferred on parents, thou, my soul,  
 " art called son; because thou deliverest (*tráyase*) from  
 " the hell called *put*, therefore thou art named son  
 " (*putra*)."

THE meaning is; because the bodies of ancestors are born again of her (that is, of the wife equal in class), therefore thou springest from successive bodies. "Let the father figuratively address his own soul, in the person of his son." Consequently the son is even the same with the father: and the father indeed is son of some person; but still the same identity exists of *him and his father*. "Since thou sleepest in body," therefore art thou born, although thou beest an *immortal soul*!" Otherwise, there could be no birth of a semi-piternal soul! Consequently the sense is, "thy birth is an union with body." "Thou, my soul, art called son, from the benefits conferred on thy father and mother." That is, conferring benefits on thy father and mother, thou art called son. What benefits? The text proceeds, "because thou deliverest thy father and mother from *put* (a hell so called)." Or thy father and mother indulgently call thee son: it is therefore fit, that thou shouldst deliver, from the hell called *put*, thy father and mother, who confer a benefit on thee by becoming the authors of thy existence, which is obtained for the sake of thy performing the several rites during purity and impurity, and for the sake of enjoying the first of such rites. They design thee son, praising thee because thou dost perform this office. The procreation of a son upon a woman of equal class being alone applauded, it is intimated by *SANC'H'A* and *LIC'HITA*, that they admit a legitimate son to be produced by a woman of equal class only.

## CXCIX.

**APASTAMBA:**—THE sons of those, who approach a woman of equal class legally espoused and not previously married to another, are concerned with religious rites, and may not be excluded from inheritance.

"Not previously married to another;" who has had no former husband;

\* Alluding to the derivation of *पुत्रः*, animated being, and man especially.

that is, no husband prior to him, who has now espoused her *in other words*, who has had no husband before him. A twice married woman is thereby excepted. Consequently she, who has been even verbally betrothed to another before him, falls not within this description. The term is so expounded in the *Pracasa* and *Retnacara*. "Legally espoused," the term is explained in the *Retnacara*, "wedded by the ceremony of joining hands as ordained by the law." Some expound it, such as the law declares a fit match, not being related to his father within the degree of *Sapinda*, or other prohibited degree of consanguinity, or the like. "Are concerned with religious rites," with the perpetual fire and the like, consequently these alone can be employed as substitutes in using the sacrificial fire, and in other duties incumbent on the father himself. This is the principal subject of the text. The legislator adds, "they may not be excluded from inheritance," they must not be excluded from the former heritage. Such is the meaning as explained in the *Retnacara*. These alone succeed to the heritage consequently. APASTAMBĀ also declares that son only to be first in rank, who is born of a woman of equal class with her husband. But there is no son superior in rank to the son begotten in lawful wedlock. If the son produced by a woman of unequal class were considered as a son begotten in lawful wedlock, the epithet "equal in class" would not have been inserted. YAJNYAWALCĀ also describes the son of the body as born of a lawful wife. MīṣṭA expounds the term, "a woman equal in class and lawfully married." For, in a gloss on another text of YAJNYAWALCĀ, (CCCXCVIII), "wife" (*spatni*) is explained one equal in class and having precedence. In illustration of which, RĀCHUṄDAKĀ cites the text of MENU (Book-IV, v, XLVI).

## CC

YAJNYAWALCĀ.—The legitimate son of the body is one, who is produced by a lawful wife, the son of an appointed daughter is equal to him; and the son of a wife is one begotten on her by an appointed kinsman sprung from the same original stock *with her husband*, or by another person *not authorized*.\*

\* I never see a list of other authorities, & some parts of it are quoted in d'it's translation.

IN the gloss of the *Dipacalicā* on this text, it is said, 'the son begotten by a man himself on a woman of equal class lawfully married to him is the son of his body.' A woman of equal class, espoused in a legal form of marriage, is a lawful wife: he, who is born of her, is the first in rank, as the son of the body. These commentators, finding texts delivered by various sages, the sense of which seems obvious, affirm, that the son of the body is one, who is begotten by the husband himself on a woman of equal class. But CHANDEŚWARA does not concur in that opinion, because, if that were the case, the son of a priest by a woman of the military class would not be included among the twelve sons. It should not be argued, that he will be the twelfth, as described by VISHNU (CLXXXV). It is proper to consider the son, by a Súdrá as the twelfth, because he is mentioned as such by Mēnu (CLXXVIII and CLXXVII). Again, if the son, produced by a woman of the military class regularly espoused, were the twelfth, he would be inferior to all the rest; for the twelfth son is described by every legislator, as the lowest of all. But the son of her, whom the law permits to be employed in acts of religion with her husband, cannot be exclusive of the twelve sons enumerated; nor can he be lowest of all. The commentator therefore reconciles the seeming contradiction by saying, "wife equal in class" here signifies a woman of a twice born class married to a twice born man, or a woman of the servile class to a man of the servile class; not a priestess alone married to a priest. The *Paryāta* concurs in this exposition. A son begotten in lawful wedlock is universally considered as the legitimate descendant of his maternal grandfather and of his own father; he inherits property, and is evidently competent to perform the *śraddha* and other rites. This subject has been suffici-

## S E C T I O N III.

## ON THE SON OF AN APPOINTED DAUGHTER.

## A R T I C L E I.

## ON THE RIGHTS OF AN APPOINTED DAUGHTER AND OF HER SON.

HE is second according to YAJNYAWALCYA; for, after describing the son of the body, as one begotten on a lawful wife, he adds, "the son of an appointed daughter is equal to him" (CC). BAUDHAYANA (CLXXX) likewise places him before the son begotten on a wife by a kinsman, and after the son begotten by a man himself *in lawful wedlock*. DEVALA also names the son of an appointed daughter immediately after the son of the body.

## CCI.

DEVALA:—THE son of an appointed daughter is equal to him; he shall inherit, as a son, the estate of his father and of his maternal grandfather who leaves no male issue.

IT appears from a text of VRISHPATI, that the son of an appointed daughter is superior to the son begotten on a wife by a kinsman.

## CCII.

VRISHPATI:—A son given, a son rejected, a son bought, a son made through adoption, and a son by a Súdra; these, if pure by class, and irreproachable for their conduct, are held in a middle degree of estimation.

2. THE son begotten on a wife by a kinsman, is contemned by good men; and so are the son of a twice married woman,

man; the son of a young woman unmarried, the son of a pregnant bride, and a son of concealed birth.

IT follows that the rest are of superior rank. Now the rest are the son of the body, whose preminence is universally admitted; and the son of an appointed daughter. The son self-given is not mentioned in the text: to count him among those of superior estimation, because a certain legislator has not declared, that he is somewhat inferior to the son of the body, would be improper. The omission will be otherwise explained in a subsequent section.

NA'REDA (CLXXXVIII) assigns the third place to the son of an appointed daughter; and the second to the son begotten on a wife by a kinsman; and the appointed daughter herself is considered by VASISHT'H'A as third in rank.

## CCIII.

VASISHT'H'A:—SHE, who has no brothers, acquires filiation, reverting to the family of her ancestors; the appointed daughter is considered as the third son, but equal to the son of the body, for she may perform his duties.

" REVERTING to the family of her ancestors; she returns to the original relation, that is, she reverts, as a son, to the family of her father.

The *Renuacara*.

A DAUGHTER, leaving the family of her father, enters that of her husband, and bears children; afterwards she reverts to the family she had quitted, and acquires filiation, by raising up issue to it. Consequently she is said to revert to the family, because she is bound to perform the duties incumbent on a son; hence she is expressly said to become a son. It follows, that she is competent to inherit. The claim of her son, as suggested by former texts, will be hereafter considered.

## CCIV.

SANC'H'A and LIC'HITA:—THE son of PRACETAS has said: "the appointed daughter is like a son;" her offspring, being

ing the son of an appointed daughter, shall offer the funeral cake both for his maternal grandfather and for his own father; there is no difference in the benefits conferred by a son and by a daughter's son: from this apprehension, a man should not marry a damsel, who has no brother.

"**BENEFITS;**" delivering his parent from the hell called *put*. "From apprehension;" from the doubt whether or not her father has taken her as a son. Thus the *Ratnacara*. From this apprehension, a man, who wishes to contract a marriage, should not take a damsel, who has no brother. This is one construction of the text:

A daughter, appointed to raise up a son, is like unto a son; that is, she is equal to him, because she performs his duties: so says DACSHA, the son of PRACHECAS. Her offspring is called the son of an appointed daughter: he shall offer the funeral cake both for his maternal grandfather, and for his father. There is no difference between a son and a daughter's son; (that is, between the son of the body and the son of an appointed daughter,) in the benefits conferred by them; as the son of the body delivers his father from the hell called *put*, so does the son of an appointed daughter deliver his maternal grandfather: and further, since it is declared that her son delivers his maternal grandfather from the hell called *put*; he does not deliver his natural father: therefore, in the doubt whether she be an appointed daughter, let not a bridegroom espouse such a bride, but let him marry a damsel, who has a brother. This is the whole meaning.

"Equal to him"; (CC1) = equal to the son of the body. The *Dipaca-*  
*līcā*, in explaining the text of YĀINTAWALCVA, "the son of an appoint-  
ed daughter is equal to him"; (CC), has this remark; "he shall have an  
equal share with the son of the body." MISRA concurs therein.

## CCV.

The *Brahme purāna*:—Such a daughter receives an equal share of the patrimony.

## CCVI.

MENU :—BUT, a daughter having been appointed to produce a son for her father, and a son, *begotten by himself*, being afterwards born, the division of the heritage must in that case be equal; since there is no right of primogeniture for a woman.

By saying this, MENU shows that an appointed daughter may claim the heritage; and in the following text he describes her son as becoming a son's son *in contemplation of law*.

## CCVII.

MENU :—BY that male child, whom a daughter thus appointed, either by an implied intention or a plain declaration, shall produce from an husband of an equal class, the maternal grandfather becomes in law the sire of a son's son; let that son give the funeral cake and possess the inheritance.

## CCVIII.

MENU :—LET the son of an appointed daughter offer the first funeral cake to his mother; the second, to her father; the third, to her paternal grandfather.

IN making double oblations, it is intimated, that a funeral cake is offered to the mother installed in the place of a father, and to the maternal grandfather in the place of a paternal grandfather; but, if his natural father have no other son begotten in lawful wedlock, he must likewise offer the funeral cake for him, since he is also son of his natural parent.

## CCIX.

MENU :—THE son of a daughter, appointed in the manner di-

\* Pārvana :—A *śraddha* with a double set of funeral cakes; three cakes are offered to the father, paternal grandfather and great grandfather; and three to the maternal grandfather, his father and his grandfather; and the crumbs of each set to the remoter ancestors' paternal and maternal.

*refted*, shall inherit the whole estate of his father, who leaves no other son."

CULLUCA<sup>H</sup>ATT<sup>A</sup> expounds "father," his natural parent. He must, therefore, of course be admitted to present two sets of double oblations; but the ancestry in his maternal grandfather's line is the same with the ancestry in the line of the natural father of his natural mother †. Or, like the son of a wife, considered as son of two fathers, he shall use two names in offering the same cake for a father. Consequently the maternal grandfather's line shall have two funeral cakes in two different forms this does not extend to the maternal grandfather's grandfather, for he does not belong to the first set, but the maternal line, ascending from the mother, is considered in two different lights.

It follows from what has been stated, that the appointed daughter, not her son, is equal to a true legitimate son. The appointed daughter shall be described.

### CCX.

M<sup>E</sup>VU.—THE son of a man is even as himself; and as the son, such is the daughter, how then, if he have no son, can any inherit his property, but a daughter, who is closely united with his own soul?

AGAIN, the son of an appointed daughter is equal to a son's son. On failure of a son of the body, these two, *the appointed daughter and her son*, shall inherit the property, although there be sons of other descriptions, but, if a son of the body be left, the son of the appointed daughter shall take, for his share, the seventeenth part mentioned by H<sup>A</sup>R<sup>I</sup>T<sup>A</sup> and others (CCXII). The right of the appointed daughter, and of her son, to inherit on failure of a son of the body, as mentioned by CULLUCA<sup>H</sup>ATT<sup>A</sup>, must be considered as a right to the whole of the heritage, agreeably to the

<sup>†</sup> The gloss compels me to alter the translation. See M<sup>E</sup>VU, Ch 9 v 131.

<sup>‡</sup> That is, the same, who are treated as ancestors of the male line in one set, are also treated as ancestors of the female in both sets of double oblations. See the note p 243.

texts of MENU. The right of the son produced by an appointed daughter, to an equal share of the heritage, follows from the texts of YAJNYAWALAYA and others; "the son of an appointed daughter is equal to the son of 'the body' (CC). It should not be argued, that, since the text of HARITA ordains a seventeenth part, therefore equal partition is not proper in this case; and the equality mentioned merely intends the exclusion of the son begotten on a wife by a *kinsman* and other inferior sons. The seeming contradictions are reconciled by referring the text of HARITA to the son of an appointed daughter deficient in virtue; and it is absolutely necessary to consider such texts as relating to deficiency in virtue; for the Brahme purâna mentions the fourth part of a share; and various texts show various allotments for the son of an appointed daughter. To assign an equal share to him, if he be equal in virtue, is therefore proper.

## CCXI.

The *Brahme purâna*:—THE son begotten on a wife by a *kinsman* shall obtain a third part as his share; and the son of an appointed daughter, a fourth.

JIMUTAVAHANA, VIJNYANE SWARA and the rest, as is remarked by some authors, explain the terms by the apposition called *carmadbâreya*; "a daughter appointed to be a son," instead of "son of an appointed daughter." But others argue from the form of appointment, as ordained by MENU, that the son of the appointed daughter thence appears to become the *adopted* son of the maternal grandfather. Marriage with an appointed daughter is censured; but, if she were considered as the son of her own father, the marriage of an appointed daughter would not be reprehended, since nothing would prevent her son remaining as the issue of his natural father.

## CCXII.

MENU:—HE, who has no son, may appoint his daughter in this manner to raise up a son for him, saying: "the male child, who shall be born from her in wedlock, shall be mine for the purpose of performing my obsequies."

THEREFORE the son of an appointed daughter alone becomes the adopted son of his maternal grandfather (CCIV).

## CCXIII.

**BAUDHA YANA!**—A boy, born of a daughter expressly appointed to raise up issue for her father, is the son of an appointed daughter; any other is merely a daughter's son.

THE participation of an appointed daughter, as mentioned by MENU (CCVI), is acknowledged on the authority of his text; it does not follow, that she becomes a son; and the expression of VASISHT'HA, describing her as a son (CCIII), is merely a lax phrase: if both were considered as such, there would be fourteen descriptions of sons. Nor is there any want of argument, on which to select one of two senses in preference to the other, for the form of appointment denotes the filiation of the daughter's son; and oblations to ancestors would fail, if it respected the daughter: consequently, the son of that daughter is directed to offer the first funeral cake to his mother, (that is, to offer it, even at *Gaya*, before he presents one to his father;) for the purpose of obviating the supposition, that, at *Gaya*, he must first perform the *śraddha* for the paternal line, and afterwards perform it for the maternal ancestors, that order being ordained generally in the *Vāyu purāna*. Hence it appears, that the son of an appointed daughter shall always first perform the *śraddha* for the maternal line. He is called the son's son of his maternal grandfather, because he is produced from one begotten by that ancestor. The appointed daughter shall only take the heritage, if she have no son; and high rank is ascribed to such a daughter because she may become mother of a son adopted by her father. The family claimed by the son of such a daughter, is that of his maternal grandfather; for it is so expressed in the text of GOTAMA (CLXXXIV 2); and the text of SĀNG'HA and LIC'HITA (CLXXXVI) coincides with that of GOTAMA, since the word "father" suggests the husband of the wife on whom a son is begotten by a kinsman, and other adoptive fathers, and since the son of concealed birth is common to both texts. It is intimated by the text of YĀJÑAWALEYA (CC), that the son of an appointed daughter shall have an equal share with the son begotten in lawful wedlock; but he bars the inheritance of every

every other son: else the phrase, "on failure of the first of these, the next in order shall give the funeral cake and take the heritage" (CLXXXIX), would be inaccurate. It should not be objected, that the equal participation of the appointed daughter alone is propounded by MENU (CCVI), because the mention of an advanced share in right of primogeniture would otherwise have been omitted; consequently, the equal participation of her son being established from parity of reasoning, the expression, "shall give the funeral cake and possess the heritage," must be explained as signifying, that he shall inherit the whole estate *on failure of a son begotten in lawful wedlock*. Even though unequal partition were made, it might be questioned whether a portion should not be allotted to the firstborn: for instance, the portion of an eldest son is allotted in right of primogeniture; it may be therefore questioned whether the fourth part or the like shall not be similarly allotted, in her right as an appointed daughter, or in right of her son: to obviate this doubt, MENU declares, that the division of the heritage must be equal; that is, it must be made without any allotment in right of primogeniture. Accordingly DE VALA (CXC 3 and 4) *in such cases* forbids the allotment of any portion in right of seniority.

But others hold, that the text of MENU does not express, "he shall be my son;" but, "he shall be mine for the purpose of performing my obsequies;" (CCXII). Consequently the daughter alone is considered as his son; and her son is considered as his son's son; and the descendants of her son are considered as the *remoter* descendants of her father. But the natural father of her son, and his forefathers, are considered as ancestors in a secondary degree, like a maternal grandfather. "He shall inherit, as a son, the estate of his father and maternal grandfather who leaves no male issue" (CCI); "as" is employed in the sense of similarity: "who leaves no male issue" refers to the word "father." The double set of oblations shall not be offered by him for his natural father; since, he is not related to different persons in the degree of a son; for a man, appointing his daughter *to raise up issue for him*, gives her to a son in law; that husband in a manner consents to relinquish every right, and her father gives her *to him* merely to be enjoyed: the son, produced by her, does not revert to the family of his natural father for any occasion he may find to claim his son. Has not

the father, who furnishes the seminal fluids, an equal claim to the son produced therefrom, as is expressed in the text; "A son, formed of seminal fluids and of blood, proceeds from his father and mother" (Book II, Ch IV, v VIII)? It should not be objected, that here, as in the case of a son begotten on a wife by a kinsman, the offspring belongs to the owner of the field, not to him who cast the seed. If there be an express agreement, the produce of the seed may be claimed by the owner of the field; but in this case, although the son in law knew not that she was appointed to raise up issue for her father, still her male child is truly the son of an appointed daughter. That is intimated by SANC'HA and LIC'HITA (CCIV) To the question proposed, the answer is, no, for the matter must be settled agreeably to the practice which prevails in the case of produce, where the intention of the party has been declared in these words, "by whomsoever seed may be sown, the produce of this my field shall be mine," in that case, if an agreement have been made, the owner of the seed shall take half the produce; but, if no express agreement have been made, the owner of the field shall have the whole produce. Or the practice, which subsists in respect of cattle, may be admitted in the case of an appointed daughter.

## CCXIV.

**MENU:**—As with cows, mares, female camels, slave girls, milch buffalos, she goats, and ewes, it is not the owner of the *bull or other* father, who owns the offspring, even thus is it with the wives of others.

2. THEY, who have no property in the field, but, having grain in their possession, sow it in soil owned by another, can receive no advantage whatever from the corn, which may be produced.
3. Should a bull beget a hundred calves on cows not owned by his master, those calves belong solely to the proprietors of the cows; and the strength of the bull was wasted.

4. **THUS**, men, who have no marital property in women, but sow in the fields owned by others, may raise up fruit to the husbands; but the procreator can have no advantage from it.
5. **UNLESS** there be a special agreement between the owners of the land and of the seed, the fruit belongs clearly to the landowner; for the receptacle is more important than the seed.

**BUT** there is this difference, that the connexion of the produce with the receptacle is inferior to its connexion with the seed.

THIS appointed daughter, is mentioned by MENU separately from the thirteen sons. She is not male, and therefore she is not placed under the same head with sons. The son of an appointed daughter is mentioned by other sages, as the son selfgiven is omitted by one and noticed by another. According to this opinion, as the son's son inherits on failure of the son, so, on failure of the appointed daughter, her son *inherits the estate*. It should not be objected, that, if two daughters be so appointed, and one of them decease, the other would have an equal title with the son of the deceased daughter. It may be so, if authorized by the law.

### CCXV.

**VRISHASPATI:**—ONE alone, namely the son of the body, is declared to be owner of the wealth *left by his father*; an appointed daughter is equal to him; but the other sons shall only be maintained.

THE text of VASISHTHA concurs in describing the appointed daughter as affiliated (CCIII). But is not this inconsistent with the form of appointment mentioned by VASISHTHA; for he acknowledges the son of the appointed daughter to be the adopted son of *her father*?

VASISHTHA :—“ THIS damsel, who has no brother, I will give unto thee, decked with ornaments; the son, who may be born of her, shall be my son.”

No; for the second word “son” here signifies descendant; and, since the offspring of the daughter is the descendant of her father, it follows that she, becoming the root of that lineage, is considered as similar to a son. In fact, the appointed daughter becomes a son when the declaration runs in this form, “this daughter shall raise up offspring to me, as if she were my son;” and her claim to the family of her father remains unaltered. But her son alone is considered as the son of his maternal grandfather, when the declaration runs in this form, “her son shall be my son;” and in this case, her son, instead of herself, belongs to the family of his maternal grandfather. In MENU’s opinion, the appointed daughter is not qualified to offer the double set of funeral cakes and the like; for, in fact, she is a woman. The mother, maternal grandmother, and maternal great grandmother, compose her son’s maternal line; the mother, maternal grandfather, and maternal great grandfather his paternal line; and the maternal grandfather and so forth, ascending to the third degree, the line of his maternal grandfather; in some cases, the same person must be acknowledged to hold a double relation. But according to other opinions, the mother, maternal great grandmother, and maternal grandfather’s grandmother, compose the maternal line; the maternal grandfather and so forth, ascending to the third degree, the paternal line; and there is no maternal grandfather’s line, for it is unacknowledged by the law. It should not be argued, that the maternal grandmother is considered as a mother, because the following verse exhibits a daughter appointed with the concurrence of his wife SETARUPA, by MENU spring from the self-existent. Since there is nothing to prevent the maternity of the natural mother, the maternity of another is merely figurative, like that of a stepmother.

Sri Bhagavata :— To Ruchi, O king! with the consent of SETARUPA, he gave ACUTI, imposing on her the duty of an appointed daughter, although she had brothers living.

THE superiority of the son produced by an appointed daughter, compared with the son begotten on a wife, by a kinsman, is founded on his not being procreated by an adulterer. For this cause, the second place is assigned to him by YĀJÑAWĀLĀYA and others; but VASISHT'HĀ and the rest assign him the third place, supposing the case of his inferiority in virtue, compared with the son of a wife begotten by a kinsman duly authorized; but not considering him as inferior, because the seed and field both appertain to another: for the right of obtaining offspring from this woman is not forfeited, any more than the property of the owner in a thing pledged for use.

## CCXVII.\*

*Brāhma-pitāna*:—THE son begotten by a man himself in lawful wedlock, even though last born, shall enjoy the whole of the estate; let the son of a wife begotten by a kinsman obtain a third part as his share; and the son of an appointed daughter, a fourth;

2. The son made by adoption shall have a fifth part; the son of concealed birth, a sixth; the son rejected, a seventh; and the son of an unmarried girl, an eighth;

3. The son of a pregnant bride takes a ninth part; the son bought, a tenth; the son by a twice married woman, the next share, or an eleventh part; the son selfgiven, a twelfth;

4. And the son by a Sūdra enjoys a thirteenth part of his father's estate.

How shall the partition be made? Not by allotting to the son of a wife so much as is a third part of the whole estate; to the son of an appointed daughter, a fourth of the whole: to a son made by adoption, a fifth of it; and so on progressively down to the son by a Sūdra: for, were it so, no share would

\* The first verse, a part of which has been already quoted at v. CCXI, is cited at length in this place; the rest are occasionally quoted in subsequent sections: I insert the whole for a general view of the shares allotted to the different sons, combining the dispersed quotations, and correcting them from the *Calecī druma*, where the text is cited at full length.

remain for the son of the body and the rest. Thus, if there happened to be sons of twelve descriptions to inherit an estate of fifteen *suvernas*: and five *suvernas* were given to the son begotten on the wife by a kinsman: three and three quarters, to the son of an appointed daughter; three, to a son made by adoption; and two and a half, to the son of concealed birth; something more than two *suvernas* ought to be given to a son rejected by his natural parents: but this cannot be made good. What then would be the situation of the rest? It should not be said, that, dividing the whole of the wealth into three parts, the son of a wife may take one; and, next, dividing the residue into four parts, the son of an appointed daughter may take one such part; and the partition may proceed in this manner. For, after the last, namely the son by a *Súdra*, has taken his thirteenth share, there would be no person to take the remainder; nor any fixed rule to determine the share of a son begotten in lawful wedlock: and if the son of the body take that residue only, his share would be very small. Nor should it be argued, that, after the death of the father, the son begotten in lawful wedlock succeeds to the whole estate, but shall give the other sons, if such there be, the shares which the law assigns to them; but, if there be no son of the body, the son begotten on a wife by a kinsman shall take one part out of the three, and the *collateral* heirs shall take the residue; or, if there be sons of other descriptions, shares shall be allotted to them, as ordained by the law, out of that residue. On the contrary, if there be sons of every description, the rest have no title to any part of the estate, the whole of which is, in the first place taken by the son of the body. The seeming difficulty is thus reconciled: if there be a son begotten in lawful wedlock, he alone shall take the whole; but an only son of another description being left, that son, if he were begotten on the wife by a kinsman, shall take one part out of three; if he be the son of an appointed daughter, a fourth part. Such is the order of proceeding. But, if there be sons of many descriptions, the texts of *SANC'HA* and *LIC'HITA*, and the rest (CLXXXVI, CCXLVII, &c.) are applicable instead of the present text.

THE estate shall be divided into ten parts for these sons (*namely for those mentioned in the text CLXXXVI 2. See v. CCXLVII*): two shares must be allotted to the father; two, to his son begotten in lawful wedlock; three,

to the son begotten on his wife by a kinsman, and to the son of his appointed daughter, and one each to the three others. The first term in the text (*vicalpa* or alternative) here relates to the rule of partition

*The Rāmācāra*

KINSMEN are those, who belong to the same race and who share the duty of offering funeral cakes and water, heirs are such as participate in the estate. The lawgiver himself explains the words "kinsman" and "heir," "one who belongs to the same race with his father and paternal grandfather &c." The paternal grandfather is mentioned for the sake of his estate which is to be divided, and for the sake of the *parvana* and *grāddha* which are to be performed. The distribution of ten shares is made by the father for the property left by the paternal grandfather. But after the death of the father, his own acquired property, and, *in his life time*, the residue of it after he has taken a considerable part for himself, must be divided into eight shares, of which two belong to his son begotten in lawful wedlock, one and a half, to the son of his wife begotten by a kinsman; one and a half, to the son of his appointed daughter, (for it is suggested, that partition must be made without admitting any disparity between these two) and one share each shall be allotted to the rest, namely to the son by a woman twice married, to the son of a young woman unmarried, and to the son of concealed birth. What becomes of the son given, the son made by adoption and the rest? It is inferred from the text, that food and raiment only shall be allotted to them: and this must be understood, *that* the son given and the rest are not of equal class with the adoptive father.

BUT MISRA remarks, that 'Mātū and all other lawgivers declare the son begotten in lawful wedlock to be heir of the whole estate, although there be sons of other descriptions; the same legislators also mention the allotment of shares to those other sons this seeming contradiction must be reconciled by saying, that, if the son of the body be virtuous, he alone shall succeed to the whole estate; but, if he be deficient in good qualities, and the rest be virtuous, the estate shall be distributed in the mode proposed.' That is liable to objection; for no specific share is mentioned in the *Brahma-gṛāna* for a son begotten in lawful wedlock but deficient in virtue, and there is no difficulty in explaining the phrase "shall enjoy the whole estate" (CCXVII),

as signifying, that he shall take a full share. "If there be many similar claimants, all share the estate." This shall be hereafter discussed.

"CLAIM the family of their adoptive fathers" (CLXXXIV 2); they belong to the same race; they perform the duties incumbent on a son, offering the funeral cake and water, and so forth; and are therefore described as claiming the family of their adoptive fathers. The son of an unmarried girl and the rest are here described as claiming the family, to forbid their participation in the estate, if there be any one of the others, namely the son begotten in lawful wedlock and the rest who are mentioned in the first text. They shall have a fourth part of the estate, on a partition made during the life of the father, if there be no son of the body or other son of the first series; but, if the father decease leaving no son born in lawful wedlock, they severally succeed to the whole estate in regular order.

### The Retnácarā.

IN the order specified in the same text; for he has not mentioned whether the order be that of the words or of the sense; but, since legislators differ on this point, the order specified by them cannot be here adduced.

THE form of partition is as follows: when the distribution is made by the father, his son born in lawful wedlock shall take a full share; the son begotten on his wife by a kinsman, and other sons of the first series, shall take a third part of a share; the son of an unmarried girl and others of the second series shall have food and apparel only. But if there be no son of the body, the son of the wife shall have a full share, and a son given and the rest shall take the third part of a share, but the son of an unmarried girl and the rest shall have a maintenance only. Should there be no son of the first rank, including one of concealed birth, then the son of an unmarried girl and the rest, if such there be, shall all take a fourth part; consequently the father shall have eight times as much, that is, double what is allotted to the son rejected. But, the father being dead, the son of a wife begotten by a kinsman, and other sons of the first series, shall have a share equal to a third part of what is allotted to the son begotten in lawful wedlock; and the son of an unmarried girl and others of the second series shall obtain a maintenance only; but, if there be

no son of the body or the like, the first in rank among sons of the second series, who do survive, shall take the whole estate, but another *inferior* son, shall have a share equal to a third part : The son of a wife begotten by a kinsman does obtain a third part, if there be a son of the body, but whence is it deduced, that the son of a pregnant bride shall have a third part, if the son of an unmarried girl be the *principal heir*? His third share is deduced from the text of *De'v YLA* (CXC 4), such participation not being mentioned by *GO'TAMA*. It should not be argued, (because *GO'TAMA*, describes the sons of the first series, from the son begotten in lawful wedlock, down to the son of concealed birth\*, as inheriting property, and the son of an unmarried girl and others of the second series as entitled to a fourth part of the paternal estate on failure of sons begotten in lawful wedlock and the rest,) that they ought to share equally. Were it so, the observation in the *Retnacara*, that they severally succeed to the whole estate in regular order, would be impertinent. It is nowhere seen, that a son of a wife begotten by a kinsman, and other inferior sons, share equally with the son of the body ; for that is virtually denied by a text above cited (CXC). Or the text of the *Brahme purāna* may be only applicable during the life of the father, in this mode when partition of property left by the paternal grandfather is made by the father, a share equal to a third part of half what is received by the father shall be allotted to the son of his wife begotten by a kinsman, a fourth part of such a moiety, to the son of an appointed daughter, and one such moiety, to his son begotten in lawful wedlock. Partition may proceed in this form, and the phrase, " shall enjoy the whole, " may signify, shall have a full share, *the father receiving two shares*. But, the father being dead, the son begotten on his wife by a kinsman shall have an allotment equal to a third, and the son of his appointed daughter one equal to a fourth, part of what is received by the son begotten in lawful wedlock, and the partition may proceed in this mode. For instance, if the father receive twenty four *suvernas*, the son of his body, shall receive twelve ; the son of his wife begotten by a kinsman, six ; the son of his appointed daughter, four, and the son made by adoption, three *suvernas*, and so forth : or the son of his wife shall receive four, the son of his appointed daughter, three *suvernas*, and so forth.

\* Down to the son rejected. See the text CLXXXIV.

If there be no son begotten in lawful wedlock, but a son of the wife begotten by a kinsman, a son of an appointed daughter, and a son made by adoption; in that case, the son of the wife inheriting the whole estate as next in succession, what share belongs to the son of an appointed daughter? It should not be said, he shall have a fourth part only as suggested by the text (CCXVII). That must be understood, from the subject of the ordinance, to mean only the fourth part of the allotment given to the son begotten in lawful wedlock. Nor should it be said, that, the son of the wife being advanced to the place of the son begotten in lawful wedlock; and the son of an appointed daughter and the rest being each raised one step, they shall receive a third part and so forth. There is no law to that effect. To the question proposed, the answer is, the same disparity of allotments, which took place between a son of the wife and a son of an appointed daughter when there was a son of the body, shall also take place in the present instance; for example, a share one third less than the allotment given to the son of the wife shall be assigned to the son of an appointed daughter; six *suvernas* being received by the son of the wife, a share diminished by one third (or two *suvernas*), and consequently amounting to four *suvernas*, shall be allotted to the son of the appointed daughter. The same should be understood in respect of a son made by adoption, and the rest; and a similar method may be observed, when the son of an appointed daughter, or another son of lower rank, is principal heir.

The son of an appointed daughter is described in the *Brabmā purāṇa*, as inferior in rank to the son of a wife begotten by a kinsman; and this must be understood, when the son of the wife is procreated by a man of the highest rank. He is described by YĀJÑAWALĀYA as superior to the son of the wife; and this must be understood when the appointed daughter is given to a bridegroom of the highest rank. If both are derived from the highest origin, and are both equal in merit, it must be held reasonable, that a third or a fourth part should be equally allotted to each. The text of SĀNCŪLA and LīCŪLA (CCXLVII) is applicable when both are derived from the highest origin and are equal in merit, but the form of distribution is there propounded, supposing no disparity between them. The very low place assigned by GO'TĀMA to the son of an appointed daughter, is proportionate

to the decline of virtue. It is observed in the *Rētnācāra*, that this allotment of a fourth part (CLXXXIV) supposes the sons to be transcendently virtuous; the *Brabme purāna* supposes them imbued with bad qualities. But in what respect is the rank, or the allotment, ordained by GOTĀMA for the son of an appointed daughter, superior to that which is directed in the *Brabme purāna*? for the allotment of a fourth part is only ordained on failure of sons begotten in lawful wedlock and the rest; but is allowed in the *Brabme purāna*, although there be a son of the body or the like, since the case of failure of sons begotten in lawful wedlock is not there mentioned, and precedence is there allowed to the son of the appointed daughter above the son made by adoption. It should not be argued, because the son of the body is mentioned as taking the whole succession, that the son of the wife shall only have a third part, and the son of an appointed daughter a fourth, when partition is made by a father, who has no son of his body. It is absolutely necessary to limit the meaning of the phrase, "shall enjoy the whole"; else the father would be deprived of all participation. Accordingly DEVĀLA says, "such among them, as are of the same class, shall have as their share, one third part of the property" (CXC 4). Having premised, "should a son of the body be afterwards born," he propounds a short rule of general import concerning their allotments. It should not be affirmed, that this text bears a different import, because the order varies. Partition, varying with different degrees of virtue, being admitted for the sake of the coincidence with other texts, the son given and the rest, being deficient in virtue, would have a third share, if there be a son of the body; and the same sons, being eminent by their good qualities, would have no share, which would be an unjust disparity. Nor should it be affirmed, that the text of the *Brabme purāna* relates to the son of a wife begotten by a kinsman and other sons unequal in class. CATYĀYANA declares, that sons unequal in class are only entitled to food and apparel.

## CCXVIII.

CATYĀYANA.—A SON of the body being born, the adopted sons of the same class take one third as their portion; but those of a different, that is, of a lower, class are entitled only to food and raiment.

Is not the particular distribution, as mentioned in the *Brahmę purāna*, inconsistent with the allotment of one third part as ordained by DE'VALA and CA'TYĀYANA? It should not be said, that the precepts of DE'VALA and CA'TYĀYANA relate to the case of a virtuous son, and the *Brahmę purāna* to the case of a son deficient in virtue. Were it so, the son of the wife and the rest being naturally equal, it would have been said, "a virtuous son shall obtain a third part as his share," to show the distinction to be founded on good qualities; instead of saying, "the son of a wife begotten by a kinsman shall obtain a third part as his share." To the question proposed some reply, a third part is mentioned as the principal allotment for the sake of illustration. Consequently, the general rule of partition must be drawn from the *Brahmę purāna*: the same, to whom the first rank is assigned in the *Brahmę purāna* on account of his eminent virtue, is placed in a middle or low rank by another author, supposing the case of his deficiency in virtue. Hence the same share, which is ordained for a son given and the rest, on the supposition of their possessing good qualities, is allotted to the son of an unmarried girl and the rest, if they possess such good qualities. Such is the difference in the opinions delivered by various sages. A full share must be therefore allotted to the son of the body; participation must be allowed to the son of an appointed daughter; a fourth part of such a share must be given to the son of a wife begotten by a kinsman; a fifth, to the son of a young woman unmarried; a sixth, to the son of concealed birth; a seventh, to the son rejected by his natural parents; an eighth, to the son of a pregnant bride; a ninth, to the son by a woman twice married; a tenth, to the son given; an eleventh, to the son self-given; a twelfth, to the son made by adoption; a thirteenth, to the son bought; and a fourteenth, though not expressly mentioned, to the son by a Sūdra, else he would be excluded from participation: such is the intention of DE'VALA. The meaning of other legislators, say these lawyers, should be similarly explained. VACHESVARA also remarks, that other lawyers refer the allotment of a third part ordained by CA'TYĀYANA, to the case of a son given, who is transcendently virtuous, because it coincides with the allotment directed in the *Purāna* for the son of a wife begotten by a kinsman. Here the rest must certainly have different allotments, not all a third part. Consequently, the remark in the *Ratrāvās*, that this allotment supposes

Sons transcendently virtuous, must relate to the son of a young woman unmarried and the rest.

## CCXIX.

HARITA:—DIVIDING the property, let a twenty-first part be given to the son of a young woman unmarried; a twentieth, to the son by a woman twice married; a nineteenth, to the son of concealed birth; an eighteenth, to the son of a wife begotten by a kinsman; a seventeenth, to the son of an appointed daughter; and the remainder, to the son of the body.

If the father be dead, a twenty-first part of the whole property shall be given to the son of a young woman unmarried; but in his lifetime, a twenty-first part of the share allotted to the son begotten in lawful wedlock. Such is the form of partition ordained by HARITA. The term employed (*mushyadāya*) is explained in the *Retribcara*; son of concealed birth. These sons are mentioned by HARITA, as occupying the first rank (CLXXXVII).

LACSHMI of HARITA explains the terms of the text last cited, "heirs to kinsmen;" that is, they take the heritage of collaterals, such as paternal uncles and the rest. The term, which occurs in that text (*sabasādriśītā*), signifies a son made by adoption. This lawgiver allows them food and raiment only, on the supposition of their belonging to a lower class, or on that of their great deficiency in virtue.

ACCORDING to this legislator, the son of an appointed daughter is second in rank, for he is so placed in the allotment of shares. By one authority he is placed in a very low rank, supposing the case of his great deficiency in good qualities. Consequently, if the son of a young woman unmarried, or the son made by adoption, be virtuous, then the son of an appointed daughter, being very deficient in good qualities, shall not succeed to the whole property; but on failure of sons, from the son of the body, to the son by a twice married woman, he alone shall succeed to the estate. Such is the opinion of GOTAMA (CLXXXIV).

Other opinions must be reconciled in a similar manner. It would be useless to investigate the distinctions of degrees of virtue, which must depend on very subtle reasoning; such an inquiry would unnecessarily enlarge the volume, and is therefore omitted. But in fact the son of an appointed daughter is either second or third in rank, according to the degree of virtue by which the son of the wife begotten by a kinsman is distinguished; for he is so placed by MENU, YAJNYAWALCYA, NAREDA, VRISHPATI, BAUDHAYANA, VISHNU, HARITA, DEVALA, VASISHTHA, SANGHA and Licchita, YAMA, the Brahme purâta, and the rest. Consequently, if there be left both a son of the wife begotten by a kinsman and the son of an appointed daughter, he alone, who is virtuous, shall inherit; but if both be equally endued with good qualities, the son of the appointed daughter shall alone inherit; for he was not begotten by an adulterer. It should not be argued, that the son of the wife, being produced from the man's own field, is more intimately connected with his adoptive father. The father has not lost his right to obtain offspring through his appointed daughter; and the son of that daughter is immediately produced from the man's own field, the mother of that daughter. Nor should it be argued, that the son of that wife is begotten by one duly appointed, but the son of an appointed daughter is begotten by a stranger not expressly authorized; and therefore the son of the wife is more intimately connected with his adoptive father. When the appointed daughter was given in marriage, the son in law was nominated to raise up offspring: but the son of an appointed daughter, described by MENU, inherits as a son's son. This brief exposition may suffice.

## CCXX.

MENU:—BETWEEN a son's son and the son of such a daughter, there is no difference in law; since their father and mother both sprang from the body of the same man;

6 By that male child, whom a daughter thus appointed, either by an implied intention or a plain declaration, shall produce from an husband of an equal class, the maternal grandfather becomes in law the sire of a son's son:

son; let him give the funeral cake and possess the inheritance.\*

THE son, however, of such a daughter, who succeeds to all the wealth of her father dying without a son, must offer two funeral cakes, one to his own father, and one to the father of his mother.

## CCXXI.

SANC'HA and LIO'HITA: — BETWEEN a son, and the son of such an appointed daughter, there is no difference.

The son of an appointed daughter being considered as a descendant in the male line, there is no difference between a son's son and the son of such a daughter; for the appointed daughter being considered as a son, her male issue is held similar to a son's son. It is hereby intimated, that, as a son's son succeeds to the heritage on failure of the son, so does the male child of an appointed daughter succeed on failure of her; and he shall take a share in right of his mother, if there be a son of another description, or if there be another appointed daughter. This text is inserted by JIMUTAVAHANA and the rest under the title of succession to the estate of one who leaves no male issue, as showing generally, that the son of a daughter shall take the estate of a maternal grandfather, who leaves no son: this will be discussed in its place.

"APPOINTED by an implied intention;" by no express declaration, that she is selected to raise up a son to her father, but thus appointed by an act of the mind unexpressed. "By a plain declaration;" declared in express words to be thus appointed. "From an husband of equal class;" mentioned to exclude a husband of inferior class, for it would be inconsistent with common sense to exclude one of superior class; and it is recorded, that daughters of Dacsra (lord of created beings, and son of PRACERAS, the descendant of a king named PRIT'HU), were married to CASYAPA, and appointed to raise up issue to their father.

\* Between this and the following verse, the hemistich, which has been inserted at CCIX, is again cited. T.

## CCXXII.

MENU.—IN this manner D'ACSNA himself, lord of created beings, anciently appointed all his fifty daughters to raise up sons to him, for the sake of multiplying his race:

2. He gave ten to D'HERMA; thirteen to CASYAPA; twenty seven to SO'MA, king of Bráhmaṇas and medical plants; after doing honour to them with an affectionate heart:

"In this manner," in the form for appointing daughters to raise up sons to their fathers: that shall be hereafter delivered. It should not be objected that this D'ACSNA is he, who sprang from the toe of BRAHMA. He is not recorded in the *Sri Bhágavata*, as giving his daughters to CASYAPA, but as giving one to SIVA.\* Nor should it be objected, that the daughters of D'ACSNA, who sprang from BRAHMA, are mentioned in other works as married to CASYAPA, which therefore coincides with the institutes of MENU. Since the *Bhágavata* may serve to reconcile the apparent contradiction, it would be improper to reject its authority.

"LET him give the funeral cake and possess the inheritance" (CCXXS); "as a son's son," must be supplied. The gift of the funeral cake is mentioned under the title of inheritance, to show that succession to the heritage is founded on the benefit conferred by offering the funeral cake. The consequence of this will be explained under the head of succession to the estate of one who leaves no male issue, "Dying without a son" (CCXXV); this is explained in the *Retnácará* and by CULLU'CABHA'TTA, leaving no son by himself begotten. That is pertinent on the supposition that an appointed daughter is considered as a son. "Who succeeds to all the wealth of his father" (ibid); of his natural father; the legislator proceeds to mention the benefit, in right of which he shall inherit the estate. Because he offers funeral cakes both to his own father and to his maternal grandfather, therefore shall he succeed to their wealth. But, if his natural father leave another son; that heir is first entitled to perform the obsequies and possess the inheri-

\* This D'ACSNA had fifteen daughters by Peacock's daughters of MENU. He gave thirteen to D'HERMA, one to Aksi, one to Laks collectively, and one to Siva. See *Hist. of India*, Part 4. The allegory in the marriage of his daughters and in the fruits of those marriages is particularly obvious. T.

tance; hence this son of an appointed daughter is a secondary and nominal son of one, who leaves no other male issue. However, the daughter's son alone shall perform the obsequies and succeed to the estate for his maternal grandfather, who leaves no male issue by sons. Such is the exposition approved by CULLUCA-BHATTA. It is reasonable, that he should only inherit if there be no sons of any other description: but nothing has been expressly said by CULLUCA-BHATTA on this point. The author of the *Pracasa*, reading the first hemistich of the last verse first\* (CCXX v.), expounds "father," maternal grandfather; considering the maternal grandfather as *adoptive* father of the son produced by an appointed daughter, or explaiting the word "father," from the relation of the terms; as signifying the father of the appointed daughter, he affirms, that the phrase, "shall inherit the whole estate of her father," is a repetition. But UDAYACARA holds, that this last hemistich is delivered as the reason of the precept: because the son of a daughter shall obtain the estate of her father, who leaves no son, therefore shall the son of an appointed daughter also obtain the estate of such an ancestor. CHANDESWARA fully concurs in that opinion: but his gloss, "leaving no son, by himself begotten," is liable to objection; for a daughter's son does not in general succeed to the estate if there be any adopted son, and there is constantly no such general right, on which that exposition can be grounded.

## CCXXIII.

MENU:—Nor brothers; nor parents, but sons, *if living*, or their male issue, are heirs to the deceased; but of him, who leaves no son, nor a wife, nor a daughter, the father shall take the inheritance; and, *if he leave neither father nor mother*, the brothers:†

ON this CULLUCA-BHATTA thus comments: neither uterine brothers, nor parents; but, on failure of sons begotten in lawful wedlock, the son of a wife begotten by a kinsman, and other secondary sons, are heirs to the deceased father: this is meant, for the right of a son begotten in lawful wedlock is deduced from another text (CCXV). But of one, who leaves no son

\* That is; he transposes the first hemistich of Menu chap. 9, v. 131, and last hemistich of v. 131. See translation of Menu, p. 262.

† Partially quoted in this place: the last hemistich is cited after v. CCCCXXIV. T.

properly

properly or improperly so called; nor a wife, nor a daughter, the father shall take the inheritance. This text is placed after describing sons of twelve kinds. In effect there is no variance.

## CCXXXIV.

**VRIHASPATI** :—As sons, so do the daughters of men, spring from successive bodies; how then should any other human being inherit the property, while a daughter exists?

2. Married to a man of equal class, virtuous, delighting in submission, she shall inherit her father's estate, whether she be expressly appointed, or not, *to raise up male issue to him.*

3. As she becomes owner of her father's wealth, even though kinsmen exist, so does her son claim the estate of his mother and maternal grandfather.

As the father sprang from the paternal grandfather, and the son from the father, so does a daughter likewise spring from her father, who proceeded from her grandfather; how then should any other, the brother of the deceased or the son of that brother, inherit the property, for the brother of the deceased, or other collateral, sprang from the grandfather of that daughter, but not from her father. "Married to a man of equal class;" not married to a man of inferior class, contrary to law. Whether appointed or not; appointed by a plain declaration or implied intention; another interpretation will be noticed under the head of succession to the estate of one, who leaves no male issue. This precept is applicable when an appointed daughter is treated like a son, as is suggested by **MANU**; for the precepts coincide, since **VRIHASPATI** describes her as similar to a son: but, if the son of an appointed daughter be considered as the adopted child of her father, he is heir in the first place. Even though kinsmen, such as brothers and the rest, do exist, her male child is capable of inheriting his mother's property because he is her son, and his maternal grandfather's property, because he is considered as a son's son.

SANC'HA and LIC'HITA :—THE daughter shall take the female property, and she alone is heir to the wealth of her mother's son, *who leaves no male issue*.

THE first part will be explained under the head of succession to the property of one who leaves no male issue. On the latter part, the following gloss is delivered in the *Retnâcara*: by offspring is here signified the son of that daughter's mother; if that son, born subsequently to her appointment, die leaving no male issue, that sister alone shall inherit on failure of the mother and father. The reason is, that she is similar to a brother. But that, it may be said, is liable to objection, for SANC'HA and LIC'HITA consider the son of an appointed daughter, not the appointed daughter *herself*, as the adopted son of her father: how then can she be similar to an uterine brother? The answer is, any son, not expressly mentioned by any one legislator, must be understood by implication. Else he would have propounded the law imperfectly, or another legislator would have asserted more than the law. According to MENU has not expressly noticed partition by a father, but he has said, "the father shall never make an unequal division among them" (XXIX). In like manner it must be inferred, that SANC'HA and LIC'HITA do not acknowledge the appointed daughter as an adoptive son, by admitting a different design in making the appointment. Then, if there be both an appointed daughter and the son of an appointed daughter, which of them shall possess the inheritance or perform the obsequies? The appointed daughter alone, for she was begotten by the man himself on his lawful wife. It should not be objected, that her claim is weaker by reason of her sex. Upon the authority of the law she is truly considered as a son; and her sex is nothing to the purpose. Nor should it be argued, that the son has a superior claim, because he gives the two funeral cakes which must be offered to the late proprietor in the double set of oblations. Were it so, she would have an inferior claim to that of the son given, and to that of any other daughter's son; which is not affirmed by any legislator. This brief statement of the law may suffice.

पूर्वानुसारं विश्वामीति विश्वामीति

## A R T I C L E II.

### ON THE APPOINTMENT OF A DAUGHTER TO RAISE UP A SON FOR HER FATHER.

"He, who has no son, may appoint his daughter in this manner to raise up a son for him" (CCXII). "Who has no son," is not mentioned as a requisite condition, but is merely descriptive; for the father of a son has no such cogent reason for appointing his daughter to raise up issue for him. Still however he may so appoint his daughter; accordingly it is well known, that MENU, son of the self-existent, and himself the propounder of this very text, appointed his daughter to raise up issue for him, although he had sons. That is mentioned in the *Sri Bhāgavata*. "O king" (see the verse cited from the *Bhāgavata* in the preceding article); the speaker thus addresses the King Pāṇḍīshīt. Or reading the word king in the first case, it relates to the agent in the sentence, namely MENU sprung from the self-existent; for he was then lord of the earth. He gave his daughter ACU'TI to RUCHI son of BRAHMA, lord of created beings, "although she had brothers;" for she had two brothers, PRĪYAVRATA, and UTTĀNAPĀDA, both kings.

"SATĀRUĀ" was wife of MENU; and the name of her son was KĀNDRA. On the term "who has no son" (CCXII) may signify, who is absolutely destitute of male issue. "For the purpose of performing my obsequies" (CCXII); the term (*śaudhbā*) signifies obsequies, for the *Vidū*, directs that word to be used with rice offered to progenitors; the meaning therefore is, for the purpose of performing the *śrauddha*. Is not this appointment useless, since all sons of daughters perform obsequies, for their maternal grandfathers? The term must be here understood in the sense of principal *śrauddha*; for it would be otherwise unmeaning. Of the word, "mine" may signify my race; and "male child" may signify descendant, such as a son or remoter descendant by males; "from her" bears a causal sense. Consequently the meaning is, that descentant, who shall proceed from her, shall

be mine, sustaining my lineage, and performing obsequies. It follows, that the daughter, being the root, whence that child springs, is included in her father's lineage; and a son's son is a descendant as well as a son. By the effect of such an appointment, the daughter belongs, as an adopted son, to her father's lineage: any other daughter passes into the family of her husband, but this daughter retains her claim to the family of her father.

" UPON the reason abovementioned, the expression " who has no brother," in the text of 'VASISHT'HA' (CCXVI) is merely descriptive; for it is not requisite to her filiation. Common sense shows, that she may be appointed to raise up a son, without being decked with ornaments; for that is not requisite to affiliation. The son of the appointed daughter being alone mentioned as an *adopted* son; does it not follow, that, according to this opinion, the appointed daughter is not considered as a son? No; for that would contradict the precept, "an appointed daughter is equal to the son of the body" (CCIII). The second word " son" therefore signifies descendant; and a son's son is a descendant as well as a son. Or by this form of appointment the son of the appointed daughter solely becomes a son: that the appointed daughter *herself* may become a son, another form of appointment must be used. Both must be considered as intended by VASISHT'HA; else the precept would be imperfect: his not having expressly mentioned both forms of appointment is nothing to the purpose; for, a son given not being mentioned in the text of the *Brâhma purâna*. (CCXVII), shall he not obtain the same share with others, if he possess similar good qualities? *The declaration may run* in this form, "the son, who shall be born from her, shall be mine," or, other words may be used to the same effect.

GO'TAMA:— HE, who has no male issue, may appoint his daughter to raise up a son for him, making an oblation to fire and performing the sacrifice called *prâjâpati* (or *prâjâpatya*) and declaring, "her offspring shall belong to me:" but according to some, she may be simply appointed by an implied intention.

" Who has no male issue," that is, who has no son; the meaning has

SOME explain the text, she, whom her father supposed to be a son, whilst she was borne in the womb of his wife; in other words, she, of whom it was thought, "this foetus will be a male child," is an appointed daughter and equal to a son. Though she be in fact a female, her father does not choose to consider her as such, but attributes to her the rank of a son, according to his wishes. If her father intend or declare, "her descendants shall be mine," she is called by VRISHASPATI an appointed daughter: she is mentioned by VASISHTHA (CCIII) as equal to the son of the body: and such an appointed daughter is intended by MENU. But a daughter, who is appointed by a plain declaration after her birth, is meant by DEVYALA and the rest: and her son becomes the adopted child of his maternal grandfather. Different forms are propounded by NAREDA to place the appointed daughter in the relation of a son; and to place the son of such a daughter in that relation.

OTHERS hold, that a plain declaration, preceded by a sacrifice with fire, and by that called *prajapatiya*, is one form; which GOTAMA himself approves: the same form is mentioned by VRISHASPATI in the first half of his text. The mere intention is a second form. By the word "mere," an express declaration and the sacrifice are excepted; and that intention is formed as early as the time, when the mother's pregnancy becomes known: this second form is not much approved by GOTAMA; and this same form is mentioned by VRISHASPATI in the second half of his text.

VISHNU:—A DAMSEL given in marriage by her father with a declaration in this form, "the son, who shall be born of her, shall be my son," is an appointed daughter: and, even though not given according to the form for appointing a daughter to raise up a son for her father, she is considered as such, if she have no brother; and were appointed by an implied intention.

"With a declaration," must be supplied in the text. Even though not appointed in that form, she is considered as an appointed daughter. On this some argue from the coincidence of the phrase with the text, "let a man es-

been already explained. " Making an oblation to fire and performing the sacrifice called *prájapatiya*," or " performing a single sacrifice with the legal fire, according to the form ordained in the particular *sácha* of the Véda followed by the family, or, if no perpetual fire be maintained, worshipping in the common form, he may thus appoint this daughter." Such is the remark of HERIHERA. Consequently two sacrifices with two fires are chiefly recommended: on failure of that, a single sacrifice with the legal fire; and this concerns such as keep a sacred hearth; but one, who maintains not a perpetual fire, may worship in a common mode. " Declaring " signifies proclaiming: " According to some, she may be simply appointed by an implied intention." By saying, " according to some," disapprobation is intimated; else the legislator would not have said, " declaring &c." By disapprobation, inferiority is intimated. It is consequently suggested, that a daughter so appointed by an implied intention, is inferior to one appointed by a plain declaration. For this very reason, GOTAMA has stated the son of an appointed daughter as not having precedence above the son of an unmarried girl and the rest (CLXXXIV). But others have expressly mentioned the son of a daughter appointed by a plain declaration, and have assigned him precedence above the son of an unmarried girl and the rest. According to the degree of good or bad qualities, he must be deemed superior, or inferior, to the son of a wife begotten by a kinsman. Thus some expound the text. Consequently an implied intention, and an express declaration (after performing the sacrifice with fire, and that called *prájapatiya*, or after simple worship) are the forms of appointing a daughter to raise up a son for her father.

**VRINASPATI:**—GOTAMA has said, that a daughter is appointed after making an oblation to fire, and performing the sacrifice called *prájapatiya*; but others hold, that a girl, who was supposed to be a son whilst borne in her mother's womb, is appointed daughter.

" *Sri roso* ;" concerning whom it was determined, that she shall be an appointed daughter.

SOME explain the text, *she, whom her father supposed to be a son*, whilst she was borne in the womb of his wife; in other words, she, of whom it was thought, "this *fœtus* will be a male child," is an appointed daughter and equal to a son. Though she be in fact a female, her father does not choose to consider her as such, but attributes to her the rank of a son, according to his wishes. If her father intend or declare, "her descendants shall be mine," she is called by VRIHASPATI an appointed daughter: she is mentioned by VASISHTHA (CCIII) as equal to the son of the body: and such an appointed daughter is intended by MENU. But a daughter, who is appointed by a plain declaration after her birth, is meant by DEVALA and the rest: and her son becomes the adopted child of his maternal grandfather. Different forms are propounded by NAREDA to place the appointed daughter in the relation of a son, and to place the son of such a daughter in that relation.

OTHERS hold, that a plain declaration, preceded by a sacrifice with fire, and by that called *prajapati*, is one form, which GOTAMA himself approves: the same form is mentioned by VRIHASPATI in the first half of his text. The mere intention is a second form. By the word "mere," an express declaration and the sacrifice are excepted: and that intention is formed as early as the time, when the mother's pregnancy becomes known: this second form is not much approved by GOTAMA; and this same form is mentioned by VRIHASPATI in the second half of his text.

VISHNU:—A DAMSEL given in marriage by her father with a declaration in this form, "the son, who shall be born of her, shall be my son," is an appointed daughter: and, even though not given according to the form for appointing a daughter to raise up a son for her father, she is considered as such, if she have no brother, and were appointed by an implied intention.

"With a declaration," must be supplied in the text. Even though not appointed in that form, *she is considered as an appointed daughter*. On this some argue from the coincidence of the phrase with the text, "let a man es-

poosle a young girl, who has a brother, &c." that every son of a daughter, who has no brother, is the son of an appointed daughter, and first in dignity; the son of an appointed daughter, as described by GÖTAMA, is inferior to him. That is wrong; for doubt is mentioned in the text of SĀNCITA and LIT'HITA (CCIV), as the reason for not marrying a damsel who has no brother; but, if there be no doubt, such a marriage may be contracted: it follows, that she does not become an appointed daughter. Hence the expression, "even though not given in the form for appointing a daughter to raise up a son for her father," must be explained; even though not given with an express declaration; but "appointed by an implied intention" must be supplied in the text, because it has the same import with that of GÖTAMA. "Who has no brother," is merely descriptive, suggesting the appointment by an implied intention; in general such an intention can only be entertained by one, who has no son.

The *Brahma purāna*:—The daughter of one, who has no male issue, being appointed a son by an act of the mind, or anywhere appointed in the presence of the king, of sacrificial fire, and of kinsmen,

2. Or *supposed to be a son* so long as she was in her mother's womb, or given after the death of her father to a bridegroom with a nuptial present for that express purpose, must be considered as an appointed daughter;
3. Such a daughter shall take an equal share of the paternal inheritance.

"APPOINTED a son by an act of the mind," is one mode. The appointment mentioned by MĀNU, and made before the king, before the sacrificial fire, and before kinsmen, *in this form*, "she is an adoptive son, her progeny shall be mine," is a second mode, preferable to the former: in the presence of the king, her father must declare, "she is appointed to be my son;" he must make the same declaration before the sacrificial fire (that is, while performing a sacrifice), and with holy texts; he must also make the

same declaration in the presence of kinsmen. "Supposed to be a son, so long as she was in her mother's womb," is a third mode. Being given to a bridegroom with a nuptial present, at the same time that her appointment is proclaimed, a daughter, even though given by another person after the death of her father, is legally appointed : consequently a plain declaration to the bridegroom, preceded by a nuptial present, is a fourth mode. According to this opinion, the difference is evidently founded on the different form of appointment to place the appointed daughter or heir child in the relation of an adopted son. The appointment by an act of the mind is the same with the second form mentioned by GOTAMA. His first form is placed second in this text. Hence, say these lawyers, the texts of GOTAMA and VRITIHASPATI do not bear the same import.

But others affirm, that an appointed daughter, who was supposed to be a male child so long as she was in her mother's womb, is considered as a son. They expound the text as follows: a daughter, mentally treated as a son so long as she was in her mother's womb, or appointed in the presence of the king, of sacrificial fire, and of kinsmen; and given by her guardian, after the death of her father, to a bridegroom with a nuptial present delivered, or not delivered but promised, is an appointed daughter. The first particle "वा" must bear the affirmative sense; the second, a disjunctive sense; and the third, must signify "also;" for it is explained by AMERA, as comparative, disjunctive, affirmative, and connective.\* Consequently that daughter, who was supposed to be a male child, from the time when pregnancy became known, or who is proclaimed to be an appointed daughter, before the king, before sacrificial fire, and before kinsmen, and who is given to a bridegroom, by whom a nuptial present has been accepted, or by whom it has been generously refused, is an appointed daughter. She, who passed through this whole ceremony, shall have an equal share with the son of the body; but, if there be any deviation in the essential points of this formality, she is reduced accordingly to a lower rank. It must be understood, that she is previously proclaimed a daughter appointed to be a son. The allotment of an equal share, as here mentioned, is admitted by MISHRA, by the author of the *Dipascalica*

\* AMERA is here misquoted, he explains वा as comparative and disjunctive, signifying and or. Some other work has been erroneously quoted in his name.

and the rest. But according to others, the meaning is, that she shall take a full share, if there be no son of the body. By acceptance of a nuptial present, or by generous acceptance of the damsel without such a present, the natural father of her child has relinquished his claim to the son born of her. This brief explanation may suffice.

BUT it should be remarked in this place, that the appointed daughter is considered as a son, that she may take the inheritance; her child is considered as an adoptive son, that he may offer the double and single sets of oblations to ancestors. This is in every respect accurate. Let it not be objected, that there is no ground for this selection in an ambiguous case. A woman is incapable of offering the double set of oblations. There is no difficulty on this exposition.

## SECTION IV.

## ON THE SON OF A WIFE.

HE is third in rank according to YĀJNYAWALCYAYA; for, after mentioning the son of an appointed daughter as second in rank, he adds, "the son of a wife is one begotten on an appointed wife by a kinsman sprung from the same original stock with her husband, or by another person duly authorized" (CC). "Sprung from the same original stock" is explained in the *Retnācara*, sprung from the same family. "By another person;" by a man of superior class. A man of equal class, but of another family, is thus excluded; hence no son of a wife can be raised to a Brāhmaṇa, unless by a man of the same family: if this be objected, the answer is, the consequence is admissible. It is accordingly said in the *Dipacalida*, a son begotten on the appointed wife of another, who has no male issue, by a kinsman within the relation of the funeral cake, or by a man of superior class, sprinkled with clarified butter, and observing the other forms consequent to the appointment, is the son of a wife.

## CCXXVI.

MENU:—EVEN the son of a wife *duly authorized*, not begotten according to the law *already propounded*, is unworthy of the paternal estate; for he was procreated by an outcast.

"Not begotten according to the law *already propounded*;" begotten, in breach of the rule, which appoints either a kinsman related by the funeral cake, or a man of superior class. "He is unworthy of the paternal estate;" consequently he does not become in law the son of a wife. "For he was procreated by an outcast;" the degradation of his natural father is hereby intimated.

## CCXXVII.

MENU:—EITHER brother, appointed for this purpose, who

deviates from the strict rule; and acts from carnal desire, shall be degraded, as having desiled the bed of his daughter in law or of his father.

"THE strict rule;" that, under which a kinsman, or a man of higher class, raises up male issue. Does it not appear from the expression, "as having desiled the bed of his daughter in law or of his father," that either brother abovementioned, and no other person, does approach the wife: how then can the strict rule be violated, since both are kinsmen? and why is it said, they shall be degraded? A man of equal class being mentioned in the text of VISHNU (CLXXXV), one of inferior class is excepted; consequently, if either brother, being inferior in class, though related by the funeral cake, approach the wife, he is degraded. But CULUCA BHĀRTĀ expounds "not begotten according to the law," begotten without observing the forms prescribed, such as being sprinkled with clarified butter, and so forth. "Who deviates from this rule," he considers as bearing the same meaning. In this mode the expression, "appointed for the purpose," may be fitly taken in a literal sense.

## CCXXVIII.

MENU:—SPRINKLED with clarified butter, silent, in the night, let the kinsman thus appointed beget one son; but a second by no means, on the widow or childless wife.

"Thus appointed"; the form of appointment is, "beget a son on this woman," or, addressed to the woman, "obtain from that man the procreation of a son." According to this opinion, it must be affirmed that the principal object fails, by the want of some formality such as being sprinkled with clarified butter, and so forth. The principal object being thus unattained, it must be examined whether the begetter be degraded, or the son begotten incapable of inheriting. The following text shows, that the son of a wife should be obtained through a kinsman.

## CCXXIX.

MENU:—ON failure of issue by the husband, if he be of the servile class, the desired offspring may be procreated, either by

by his brother or some other *Sapinda*, on the wife, who has been duly authorized.

THE brother of her husband is named in the first instance, on failure of him, another kinsman related by the funeral cake. The desired offspring may be obtained by a wife duly authorized by her spiritual parents, from a brother of her husband or from another *Sapinda* “ Desired offspring” being mentioned, if a child unfit for the duties *incumbent on a son*, be produced, it is permitted to repeat the intercourse for the purpose of obtaining such a son as is to be desired, namely one capable of his duties. Such is the interpretation, of *CULLUCAEHATTA*. Consequently the term “one,” in the expression “beget one son,” must signify one male child fit for the duties *incumbent on him*.

THE third twice-married woman, mentioned under the title of loans and payment,\* is different from this woman; however, she may be considered as a twice married woman of that description, for the word “given,” in the text alluded to (Book IV, v CLVIII 4), may signify ‘entrusted for the procreation of a son.’ This sense must be deduced from reasoning since she is not a woman wilfully libidinous; therefore, being one who had a different husband before, she must fall within the description of a twice married woman.

“ THE second is the son of a wife, begotten by a man of equal class on “ a wife duly appointed” (CLXXXV), a man of equal class here denotes one not inferior in class. Accordingly, the procreation of a son by the holy *VASISHTHA*, for *SAUDASA* a king of the solar race, which is familiarly known from the *Mahabarata* and other works, is vindicated. Alluding to this, the author of the *Dipatula* has said, ‘or by a man of superior class’

*VISHNU* has allotted the second place to the son of a wife, on the supposition of his superior good qualities, as has been already explained. The third place is allotted to the son of an adopted daughter; for that is shown by

\* I have inserted the text in the fourth book. It is cited in both places.

## CCXXXII.

MENU:—HE, who keeps the fixed and moveable estate of his deceased brother, maintains the widow, and raises up a son to that brother, must give to that son, *at the age of fifteen*, the whole of his brother's divided property.

A SHARE allotted to brother's wives, although they have no sons, is mentioned by VASISHTHA (CXVII); the brother, by whom that allotted share is kept, and by whom the widow is maintained, and who begets a son on that widow, must deliver the property to him. But, if no son shall be born, all the brothers shall take it as joint property. This will be explained under the title of succession to the estate of one, who leaves no male issue.

If the wife of the eldest brother be so situated, shall, or shall not, the portion of an eldest son be allotted? The answer is, since the share is set apart, that it may be ultimately received by the nephew, the precept, delivered in a text formerly cited (LXXVI 1), must be here adduced. But if authority be given in this form, “raise up a son by any suitable man,” then, since the son may possibly be procreated by another man, a share should be set apart with the portion of an eldest child; and if that share be kept by any one younger brother, and the son be procreated by him, still he shall take an allotment which includes the portion of an eldest child, because it had already become his. Thus some lawyers solve the question. But that is wrong; for one, who is yet unborn, can have no vested title; and, during the interval, that wealth is similar to unowned property. The wife's son, already born, cannot take the portion of an eldest child; he shall therefore only receive an equal share. But CULLU CABHATTĀ considers this text as relating to divided brethren; consequently, when a separated brother dies, his property should be committed by his widow, who is incapable of guarding it, to any one brother of her husband: procreating a son on that widow, he must give the whole of the property to that child.

## CCXXXIII.

MENU:—SHOULD a wife, even though legally authorized, produce a son by the brother, or any other sapinda, of her husband,

husband, that son, if begotten with amorous embraces and tokens of impure desire, the sages proclaim base born and incapable of inheriting.

On this *CULLU'CA BHATTA* delivers the following gloss: if a wife, even though legally authorized by spiritual parents, produce a son by the brother, or other near kinsman, of her husband; or by a man of superior class, who observes the prescribed form of being sprinkled with clarified butter and so forth (for the circumstances mentioned are merely illustrative); but acts from the impulse of unchaste desire, that son is incapable of inheriting; and is base born; for he is not competent to perform obsequies and take the heritage; in fact he is begotten by an adulterer. But such a son, begotten without amorous embraces and tokens of impure desire, is capable of inheriting. That is declared by *NĀRĀDA*; "Averting his face from hers, and shunning the contact of limb with limb, for the sake of offspring, that the family may be perpetuated, and not through amorous desire." \* "That the family may be perpetuated;" in that family, wherein that future son will continue and perpetuate the race, or wherein that woman will remain. The meaning is this: one fruit of a wife is connubial joy, another is male issue, as declared in the *Cālīcā purāna*; "a wife affords connubial joy and male issue;" since progeny is of course suggested by the single term of connubial joy, male issue is again expressly mentioned by way of allusion to the son legally begotten on the wife of another and so forth, and for the purpose of showing that the act must be free from amorous desire: the brother of a husband, and others acting as substitutes, must not take that fruit, which consists in connubial pleasure; for the law does not authorize it; they must only

not legally authorized by spiritual parents, produce a son by the brother, or any other *sapinda*, of her husband, that son is begotten through impure desire &c." Their exposition is wrong, for the text would be a vain repetition of the following.

## CCXXXIV.

**MENU:**—THE son of a wife, not authorized to have issue by another, and the son begotten, by the brother of the husband, on a wife, who has a son then living, are both unworthy of the heritage; one being the child of an adulterer, and the other produced through mere lust.

Both must be considered as sons of adulterers, and produced through mere lust.\* Others, following the gloss of CULLUCA BHATTA on a text above cited (CCXXVI), consider the particle (*va*) as connective, and interpret the text (CCXXXIII), should a wife, even though duly authorized, produce a son by any other, than a brother or *sapinda* of her husband, that son is begotten through impure desire. To conclude, the sage proceeds to mention a particular rule concerning the son of a wife.

## CCXXXV.

**MENU:**—BUT the son legally begotten on a wife, authorized for the purpose beforementioned, may inherit in all respects, if he be virtuous and learned, as a son begotten by the husband; since in that case the seed and the produce belong of right to the owner of the field.

"On her (*tatra*)"; on such a wife as is suggested by the law, one of inferior class to the procreator, or related to him within the degree of a *sapinda*, and to whom he shows due respect, being sprinkled with clarified butter and so forth. Or the term (*tatra*) may be taken in another sense of the seventh case, as in the example "if there be wealth there is ease"; and the sense is, if the circumstances required by the law do exist. A son so begotten may inherit the property (for that must be supplied in the text), like a son of the body

\* I think it unnecessary to alter the translation of this text for the purpose of reconciling it with the commentary. See MENU, Chapter 9, p. 143.

husband, that son, if begotten with amorous embraces and tokens of impure desire, the sages proclaim base born and incapable of inheriting.

ON this CULLU'CABHATTA delivers the following gloss: if a wife, even though legally authorized by spiritual parents, produce a son by the brother, or other near kinsman, of her husband, or by a man of superior class, who observes the prescribed form of being sprinkled with clarified butter and so forth (for the circumstances mentioned are merely illustrative); but acts from the impulse of unchaste desire; that son is incapable of inheriting; and is base born; for he is not competent to perform obsequies and take the heritage; in fact he is begotten by an adulterer. But such a son, begotten without *amorous embraces and tokens of impure desire*; is capable of inheriting. That is declared by NAREDA; "Averting his face from hers, and shunning the contact of limb with limb, for the sake of offspring, that the family may be perpetuated, and not through amorous desire." \* "That the family may be perpetuated;" in that family, wherein that future son will continue and perpetuate the race, or wherein that woman will remain. The meaning is this: one fruit of a wife is connubial joy, another is male issue, as declared in the *Cālīcā purāna*; "a wife affords connubial joy and male issue;" since progeny is of course suggested by the single term of connubial joy, male issue is again expressly mentioned by way of allusion to the son legally begotten on the wife of another and so forth, and for the purpose of showing that the act must be free from amorous desire: the brother of a husband, and others acting as substitutes, must not take that fruit which consists in connubial pleasure; for the law does not authorize it: they must only seek that fruit, which consists in male offspring. Connubial pleasure is a certain mutual relation of husband and wife; it is excited by the contact of mouth and limbs: hence, since that particular state, which constitutes connubial pleasure, must be avoided, it follows that the contact of mouth and limbs must be shunned. That particular state *unavived* becomes the cause of degradation; hence a son should be procreated in a legal mode: a man of inferior class and so forth must in this case be shunned, as a *dwipal* related within the degree of a *sapindas* and the like is avoided in contracting a marriage. Such is the law.

But some insert the privative *A-* and explain the text, "should a wife,

not legally authorized by spiritual parents, produce a son by the brother, or any other *sapinda*, of her husband, that son is begotten through impure desire &c." Their exposition is wrong, for the text would be a vain repetition of the following.

## CCXXXIV.

**MENU:**—THE son of a wife, not authorized to have issue by another, and the son begotten, by the brother of the husband, on a wife, who has a son then living, are both unworthy of the heritage; one being the child of an adulterer, and the other produced through mere lust.

Both must be considered as sons of adulterers, and produced through mere lust.\* Others, following the gloss of **CULLU CABHATTA** on a text above cited (CCXXVI), consider the particle (*va*) as connective, and interpret the text (CCXXXIII), should a wife, even though duly authorized, produce a son by any other than a brother or *sapinda* of her husband, that son is begotten through impure desire. To conclude, the sage proceeds to mention a particular rule concerning the son of a wife.

## CCXXXV.

**MENU:**—BUT the son legally begotten on a wife, authorized for the purpose beforementioned, may inherit in all respects, if he be virtuous and learned, as a son begotten by the husband; since in that case the seed and the produce belong of right to the owner of the field.

On her (*tatra*); on such a wife as is suggested by the law, one of inferior class to the procreator, or related to him within the degree of a *sapinda*, and to whom he shows due respect, being sprinkled with clarified butter and so forth. Or the term (*tatra*) may be taken in another sense of the seventh case, as in the example "if there be wealth there is ease"; and the sense is, if the circumstances required by the law do exist. A son so begotten may inherit the property (for that must be supplied in the text), like a son of the body.

\* I think it unnecessary to alter the translation of this text for the purpose of reconciling it with the commentary. See **Menu**, Chapter 9, v. 143.

of the husband and the like. In the compound term, which signifies son of two fathers (*dwipita*), the regular suffix is omitted, not being indispensably requisite after compound words. He claims descent from the original stock of both. The word "obsequies" signifies rites performed in honour of ancestors.

The *Retnacara*.

CCXXXVIII.

**YĀJNYAWALCYA:**—THE son begotten by one, who has no male issue, on the wife of another, after due authority given to him, is considered as heir to both, and shall present the funeral cake to both fathers.

CCXXXIX.

**NA'REDA:**—THE produce of seed sown in the field of another, with the owner's permission, is considered as belonging both to the owner of the seed and to the proprietor of the soil.

CCXL.

**SANC'HA and LIC'HITA:**—THE son of ANGIRAS has declared, that the offspring belongs to him who married the mother; but US'ANAS holds, that the produce of seed, which is sown with the consent both of the owner of the seed and of the owner of the field, is shared by both.

Two opinions are delivered by SANC'HA and LIC'HITA, as espoused by two different legislators. The religious ceremony relative to the mother consists in taking her hand in marriage; to him, who has done so, namely to the owner of the field, belongs the offspring procreated by another. So A'NGIRASA\* has said. According to his opinion, this offspring does not belong to the owner of the field. Whatever seed is sown, its produce, or the offspring, which is similar to produce, is shared by both, that is, belongs both to the owner of the seed and to the owner of the field. So says US'ANAS, preceptor of the *Daiyav*, and regent of the planet Venus.

\* Vrithapati, son of ANGIRAS.

begotten by the husband on his own wife. Whose property shall he sit, the husband's, or the natural father's? In reply to this question adds, "since in that case the seed and the produce belong of right owner of the field." The proprietor of the field becomes owner seed, because he begged it hence the produce belongs to him does not one, irregularly begotten on a wife duly authorized, be the owner of the field? Therefore does the sage add, "of right," lawfully begotten but one irregularly procreated is not lawful issue, though connected with the owner of the field, he is not consider his son, for he is incapable of filial duties and MENU had properly in a former text, "the seed belongs to the landowner."

## CCXXXVI.

**MENU.**—WHATEVER man owns a field, if seed come into it by water or wind, should germinate, that seed belongs to the landowner; the mere sower takes not fruit.

As seed, such as corn or the like, being brought by a stream of water current of wind, and falling on the field of another, produces a crop belonging to him, so seed, or seminal juices, brought by intreaty or the like falling on the field, that is, the wife, of another, raises a son belonging to that other.

## CEXXVII

**BAUDHA'YANA.**—THE son begotten by another on the of a man deceased, impotent, or distempered, after authority given for that purpose, is the lawful son, wife

2. He is considered as the son of two fathers, claim families, and may perform the obsequies and take marriage of both fathers.

The construction, "son begotten by another," namely by

to obviate the doubt whether this son does not belong to both, since he is born of the wife; and begotten by the brother of her husband. This is true, because she is not independent: the wife belongs to the husband alone; and therefore offspring, obtained through her, belongs exclusively to him.

Is it not superfluous to distinguish whether the husband be alive or dead? for a woman is bound by the obligation of dependence on her husband, even after his decease; else, a widow might connect herself with any man she pleased, since no one could oppose it. It should not be objected, that a widow is restrained from such conduct, not through her dependent condition, but by the dread of vice: else (*if women were not restrained by a sense of duty*), what should prevent an unmarried girl connecting herself with a stranger? The cases are not parallel; for, in the instance of an unmarried damsel, there is no person, who can authorize her incontinence. The seeming difficulty is likewise reconciled upon this principle.

THE text is read *na dviyámushyáyanam*, not the issue of two fathers, instead of *dwyámushyáyanam*, issue of two fathers. He, by whom the seed is sown, is in so far her lord; for she has no *real* husband. Consequently, after the death of her husband, since there can be no compact, that the child shall be son of both, the offspring does not belong to both. But, during his life, it is possible that such an agreement should be made. With a view to this, the legislator says "during the life of her husband." The negative must therefore have been inserted through negligence. According to the *Rennácara*, "some" is connected with "consider." The son (that is, the son of the wife's son), when offering the second ball of rice to his paternal grandfather, shall celebrate both ancestors with each ball. In offering the third cake to the paternal great-grandfather, the son's son (that is, the grandson of the wife's son) shall celebrate both ancestors.

RIGID interpreters consider the expression "during the life of her husband" as merely illustrative. They read the text *Yat dwiyámushyáyanam*, and explain it, that son of the wife, who is thus produced, some consider as son of two fathers. Why? Because the husband is not independent (for so, they think the text must be supplied). The reason of his wanting in 'open' care is sub-

HARITA :—THE son of the wise, *begotten by another during the life of her husband*, some consider *as son of her husband alone*, because she was not independent; *but one begotten after his death, they consider* as the issue of two fathers, because the seed was not sown *by her husband*. *for soil bears not fruit without seed, nor does seed germinate without soil.* They consider him as the offspring of both, because both appear *to contribute to his birth* among these, he is originally the son of the procreator; let him offer two funeral cakes in the sacrifice to progenitors, and celebrate both fathers on each cake: his son *shall name both* with the second cake; his son's son, with the third; and those *remoter descendants*, down to the seventh in descent, who wipe off the rice with roots of *cusa*, *shall make this offering* for the sake of *both ancestors in each of three degrees.*

to obviate the doubt whether this son does not belong to both, since he is born of the wife, and begotten by the brother of her husband. This is true, because she is not independent the wife belongs to the husband alone, and therefore offspring, obtained through her, belongs exclusively to him.

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subjoined ; because the seed was not sown by him. In answer to the question, if the seed be more efficacious than the soil, must not the produce belong to the owner of the seed alone, not to the owner of the soil ? but, if the soil preponderate, must not the produce belong to the owner of the soil alone, not to the owner of the seed ? the sage subjoins the argument, on which the produce may be held to belong to both, " for soil bears not fruit without seed &c " The construction of the sentence refers the word " consider " to the word " some " " Procreator" alludes to the husband obtaining offspring by means of his wife considered as his field, and to the natural father obtaining issue by means of seed. " Celebrate both fathers on one cake," is a secondary case. The term used in the text (*trín áchaeshána*) signifies for the sake of both ancestors in each of three degrees. NÁ'REDA and CÁ'TKA'YANA have noticed both cases. Their text has been already cited (CXXXIX repeated at v. CCXLV).

## CCXLII.

NÁ'REDA :—THE son of two fathers shall separately offer the funeral cake and water to both, and shall take half a share out of the estate of his natural father and another half share out of the estate of his mother's husband.

From the word " separately," it appears, that two funeral cakes shall be offered to two fathers. The order, in which they should be offered, not being mentioned, is optional. It is observed in the *Retnácarita*, that this relates to the case, where the natural father has a son begotten in lawful wedlock, and the husband of the mother also has by some means obtained male issue by himself begotten. But a son of two fathers shall take the whole property of both fathers, if they leave no other sons (CCXXXVII). This is illustrated by the following example.

## CCXLIII.

FUNERAL cakes must be offered to both fathers, and both names be proclaimed with each cake; three balls of rice shall be offered to six persons; he, who does so, errs not.

He commits no offence

The *Retracara*

THE investiture and other ceremonies must only be performed by the husband of his mother, for he is claimed by him as a son. This child derives a family name from the primitive stock of both fathers, for BAUDHA YANA says, he claims both families (CCXXXVII) In the triple set of oblations\* to be offered by him, there shall be two paternal lines, say these rigid interpreters, for it is similar to the double set

An apparent contradiction here occurs between the texts of BAUDHA YANA and others, and those of MENU and the rest It is thus reconciled by CHANDESWARA if the husband's brother, or other person, appointed to raise up a son to the husband, have male issue, then the son of the wife belongs to the husband alone, not to the natural father But, if he procreate the son, stipulating by special compact, that "the child shall in this world equally belong to both of us," that child shall be son of both, MENU himself makes this evident

#### CCXLIV.

MENU — BUT the owners of the seed and of the soil may be considered in this world as joint owners of the crop, which they agree, by special compact in consideration of the seed, to divide between them.

" By special compact, by an agreement in this form, " the crop, which shall be produced shall belong to both of us" AMERA states the term (*abbyutazama*) as synonymous with compact or agreement

#### CCXLV

CATYAYANA — THE produce of seed sown in the field of another, with the owner's permission, is considered as belonging both to the owner of the seed, and to the owner of the soil.

\* *Nandaka* a 'ulus a joyous occasions in which nine bowls of rice are offered to the father paternal & a dsat & great grandfather to the maternal grandfather & great grandfather and great great grandfather and to the mother paternal grandmother, a paternal great grandmother & T

VR̄IHASPATI (CCII), mentioning with scorn the son of a wife and the rest, because the mother is unfaithful, alludes to the son, who is generated by a wife and brother proceeding with amorous blandishment, in opposition to the conduct prescribed. The son self-given is included by him in the description of sons rejected or of those, *who are made by adoption.*

## CCXLVI

VR̄IHASPATI — BUT other sons, namely the son of the wife and the rest, shall respectively share a fifth, a sixth, and a seventh part.

" THE son of the wife and the rest,"<sup>1</sup> namely the son of the wife, the son of a young woman unmarried, and the son of a twice married woman, shall respectively share, in the order in which they are mentioned, a fifth, a sixth, and a seventh part

The *Retnacara-*

HARI'TA directs, that an eighteenth part shall be given to the son of a wife begotten by a kinsman (CCIX), the *Brabne-purana* allots a third part to him (CCXVII), and SANC'HA and LIC'HITA direct another distribution

## CCXLVII

SANC'HA and LIC'HITA.—THREE shares shall be allotted to the son of a wife begotten by a kinsman and to the son of an appointed daughter, and one to each of the rest.\*

THE form of distribution must be understood in the mode already explained in the preceding section. If his birth and conduct be irreproachable, it is agreed by all, that he is heir to his *adoptive* father and to kinsmen. But the son of a wife, begotten by a kinsman without due authority, shall only inherit the estate of his natural father (CCXLVIII). Such a son is the same with the twelfth son described by VISHNU (CLXXXV)

## CCXLVIII

IF a son begotten in lawful wedlock and a son of the wife be-

\* The last words are here first cited, to complete the text, as I find it cited in another place  
gotten

gotten by a kinsman contend for the same heritage, let each take,<sup>\*</sup> exclusively of the other, his own father's estate.

It should be remembered in this place, that if the issue of one, who has conducted himself in strict conformity with the law, happen to be a female, she shall belong solely to her natural or to her adoptive father, or jointly to both of them, according to the agreement *they have made together*: as is suggested by the reason of the law. This brief exposition may suffice.

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\* The last hemistich is word for word the same with a text of Mere Chapter 9, v. 191; but the first hemistich differs. T.

## S E C T I O N V.

## ON THE SON OF CONCEALED BIRTH.

He is fourth in rank according to YA'JNYAWALCYA, for, immediately after describing the son of the wife as third in rank, he proceeds to mention the son of concealed birth

## CCXLIX

YA'JNYAWALCYA.—A male child, secretly brought forth by a married woman in the mansion of her lord, is considered as a son of concealed birth.

THE purpose is to show, that, on failure of other male issue, including, the son of the wife by a kinsman, the son of concealed birth shall take a full share, although there be a son of an unmarried girl, a son given, or the like, and the rest shall take the portions allotted to them by HA'RITA and others (CCXIX) "Secretly." so that it is not known whose child he is.

## CCL

MENU:—In whose mansion soever a male child shall be brought forth by a married woman whose husband has long been absent, if the real father cannot be discovered, but if it be probable that he was of an equal class, that child belongs to the lord of the unfaithful wife, and is called a son of concealed birth in his mansion.

If it be judged from any circumstances, that he was not begotten by a man of inferior class, and if the true father be unsuspected, he is called a son of concealed birth, and belongs to the same class with his mother and to the same family with her husband, and perpetuates his race. Such is the exposition

sition approved in the *Retnacara*. It being mentioned as a reason why he belongs to the same class with his mother, that the true father is unsuspected, it is thereby intimated, as the opinion adopted in the *Retnacara*, that the legitimate son of a priest, by a Cshatriya wife, belongs to the sacerdotal tribe. This mode of reconciling the apparent contradiction between the texts of YAJNAYAWALCYA and that of another legislator is liable to objection—the first, after premising, that the son of a priest by a woman of the military class is called *Murdhababaji*\*, and so forth, adds, “from a mere chant, by a woman of the servile class, sprung the *Carara*, this rule is ordained in regard to married women” the other expresses, “men of mixed classes perform rites during seasons of purity and impurity, in the same form which is practised by men of their mother’s tribe.” But CULUCABHATTA mentions, as the son of a married woman, the *Parasiva*, another name of the *Nishada*, or son of a *Brabriana* by a *Sudra*, but has said nothing expressly on this point. He shows, however, that, if the father be known to be equal in class, but the particular person be unascertained, the child is called a son of concealed birth. Equal in class here signifies not inferior in class, for that agrees with the *Retnacara*, and is consistent with reason.

If the natural father be known, and if authority had been duly given to him, and he violated no part of the form prescribed, such as being sprinkled with clarified butter and so forth, the child is called the son of the wife, but not unless authority had been given in this last case he belongs to the procreator alone as already mentioned. Is not good argument wanting to show why he should be called the son of concealed birth when the real father is unknown but not so called when the procreator is ascertained? It should not be answered, if a known person procreate a son without authority given for that purpose, the child belongs to him alone not to this husband. That is denied by MENTU (CCXXXVI). If this difficulty be proposed, the answer is, legislators are not liable to such reproaches. In fact, this and other texts (CCXXXVI &c.) allude only to the son of concealed birth, to the son of the wife, and the like. Else, the son begotten by a known person, without authority for that purpose, could be another

\* The same with the *Murdhababaji* of MENTU T

son of a similar description with the son of the wife. Nor is this reasonable; for MENU has provided against it (CCXXXIV). It should not be affirmed, that he may belong to the husband of his mother, although his right of inheritance be denied. The difficulty vanishes, if he may fulfil the duties of a son towards his real father (as a daughter's son towards his own father), although he belong to the husband of the wife. Nor should it be asked, what proof is there, that he may discharge filial duties, since the twelfth son, mentioned in the text of VISHNU (CLXXXV), is explained in the *Retnacara*, from the concurrent import of the texts of VASISHT'HA and others, as signifying a son by a *Sudra*. He is described by APASTAMBA as son of his natural father.

## CCLI.

APASTAMBA:—LET cautious men guard their offspring, and suffer not the seed of a stranger to be sown in their fields.

<sup>3</sup> A SON belongs to his natural father, the wise deem such offspring useless in another world.

FROM the mention of another world, it appears, that the child is, to his natural father, a son capable of performing for him such rites as respect another world. The meaning of the text is this, cautious men, or those, who are not heedless and negligent, guard their offspring, their son, and son's son, and the rest, and they are careful that the seed of a stranger be not sown in their fields, meaning their wives. He subjoins the reason, because the son belongs to his natural father and is useless to the husband of the mother in respect of another world. Such is the exposition approved in the *Retnacara*.

## CCLII.

MENU.—THEY, who are acquainted with past times, have preserved, on this subject, holy strains chanted by every breeze, declaring, that “seed must not be sown in the field of another man.”

2. As the arrow of that hunter is vain, who shoots it into the wound, which another had made just before in the antelope, thus instantly perishes the seed, which a man throws in the soil of another:
3. Sages, who know former times, consider this earth (*Pṛithivī*) as the wife of king PRITHU; and thus they pronounce cultivated land to be the property of him, who cut away the wood, or who cleared and tilled it; and the antelope, of the first hunter, who mortally wounded it.
4. THEN only is a man perfect, when he consists of three persons united, his wife, himself, and his son; and thus have learned Brāhmaṇas announced this maxim: "the husband is even one person with his wife," for all domeslick and religious, not for all civil, purposes.
5. NEITHER by sale nor desertion can a wife be released from her husband: thus we fully acknowledge the law enacted of old by the lord of creatures.
6. ONCE is the partition of an inheritance made; once is a dāmsel given in marriage; and once does a man say "I give!" these three are, by good men, done once for all and irrevocably.
7. As with cows, mares, female camels, slave girls, milch buffalos, shegoats, and ewes, it is not the owner of the bull or other father, who owns the offspring, even thus is it with the wives of others.
8. THEY, who have no property in the field, but, having grain in their possession, sow it in soil owned by another, can receive no advantage whatever from the corn, which may be produced.

stricted. As partition of inheritance among brothers is made once only, and must not be repeated to subvert a former partition without a sufficient cause, and as a man once only says "I give," (and consequently a thing, which has been bestowed on one, ought not to be given to another,) so a damsel is given by her father once only and to one bridegroom. It follows of course from the maxim, once only does a man say, "I give," that a damsel can only once be given, is it not a vain repetition to add, "once is a damsel bestowed in marriage?" CULLU'CABHATTA replies, it is incidentally mentioned that chattels in general are once given, and partition of inheritance once made, the single gift of a damsel being the subject of the text, it is repeated: this text intimates, that the offspring of a woman first given to one man, and afterwards obtained by another from her father or other relative, belongs to him alone, on whom she was first bestowed. The subsequent text (CCLII 7) is plain, and the last verse contains a comparison. The import of these texts is particularly explained under the title of duties of man and wife the literal sense is here exhibited, for MENU declares, that the produce belongs to the owner of the soil.

It should not be argued, that these texts relate to the *express* appointment made by the husband for the sake of obtaining issue. Were it so, it would follow, that, in the case of a daughter appointed as abovementioned, her son would be considered as the son of her husband and the comparison in a former text (CCXXXVI) would be unequal. If this be alleged, some reply, 'in the case of an appointed daughter, the damsel is given to a known person for the sake of raising up issue to *her father* himself, in the case of one, who uses *his wife* himself, there is no delivery of her for the sake of obtaining male issue, such is the difference.'

## CCLIII.

MENU:—THEY consider the male issue of a woman as the son of her lord, but, on the subject of that lord, a difference of opinion is mentioned in the *Véda*, some giving that name to the real procreator of the child, and others applying it to the married possessor of the woman.

The meaning of these texts is subjoined as the arrow is vain, which is last shot into the vacant wound of an antelope already struck by another, (the antelope not being thereby gained, because the first hunter, who mortally wounded it, is alone entitled to it,) so that seed is lost, which a man sows in soil already owned by another, for he does not thereby obtain the son produced, but the husband alone has a right to the child born of his wife. If he, who enjoys the woman, absolutely take her, to whom does her son belong? To this question it is answered, the right is null, since she had been already taken by another. Sages consider this earth which became the wife of PRIT'HU, as wife of him alone, though subsequently possessed by other kings, so that woman, who has been already espoused by one, and is afterwards seized or enjoyed by another, belongs to him alone, *who first espoused her*. In like manner, cultivated land, or ground tilled for corn or the like, belongs to him, who cleared the forest and extirpated the remaining trees, of which the trunk and branches had been felled, not to him, who subsequently tills the soil and, in like manner, the antelope becomes the property of him, who secured possession by mortally wounding it, not of him, who first seizes the dead animal and runs away. Still may not another become owner of a woman, as of any other thing, by purchase or the like. The lawgiver subjoins in answer with the grounds of it then only has a man due weight, when he consists of three persons united. Consequently one man consists of three persons, his son, his wife, and himself, as the sacrifice, called *darsa*, consists of three casts of religion. To this purpose words of scripture are inserted by CULLUCA-BHARTA ("the husband is ever one person with his wife") How then can what is consubstantial with one, become consubstantial with another. Notwithstanding gift or sale, she remains his wife and becomes not the wife of another this answer is expressly given, neither by sale nor by desertion does she cease to be his wife. As for desertion mentioned among the sins of various degrees, that relates to abandonment in civil matters; she is not thereby divorced. Hence she forfeits not her claim to the family of her husband; and, the offence being expiable by penance and the like, impurity only is con-

\* The *key* indicates a good source of the *grammatical* and thus *agricultural* terms used in adapting a Wilson's *practical* on the way of *translating* the *germane* to a *slipper* *student* & *well* *born*.

tracted. As partition of inheritance among brothers is made once only, and must not be repeated to subvert a former partition without a sufficient cause, and as a man once only says "I give," (and consequently a thing, which has been bestowed on one, ought not to be given to another,) so a damsel is given by her father once only and to one bridegroom. It follows of course from the maxim, once only does a man say, "I give," that a damsel can only once be given, is it not a vain repetition to add, "once is a damsel bestowed in marriage?" CULLU'CABHATTA replies, it is incidentally mentioned that chattels in general are once given, and partition of inheritance once made, the single gift of a damsel being the subject of the text, it is repeated this text intimates, that the offspring of a woman first given to one man, and afterwards obtained by another from her father or other relative, belongs to him alone, on whom she was first bestowed. The subsequent text (CCLII 7) is plain, and the last verse contains a comparison. The import of these texts is particularly explained under the title of duties of man and wife the literal sense is here exhibited, for MENU declares, that the produce belongs to the owner of the soil

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2. THE woman is considered in law as the field, and the man as the grain : now vegetable bodies are formed by the united operation of the seed and the field.
3. IN some cases the prolific power of the male is chiefly distinguished ; in others, the receptacle of the female ; but, when both are equal in dignity, the offspring is most highly esteemed.

SAGES hold generally, that the male issue of a woman is the son of her lord ; but whether that lord be the married possessor of the woman, or the real procreator of the child, is questioned ; on this point the sense of scriptural texts is doubtful : such is the meaning of the first verse. As for what is affirmed, that whosoever is chiefly distinguished in respect of procreation, whether the married possessor of the woman, or the real procreator of the child, to him does the son belong ; still a doubt remains, for both are important. Comparing offspring to other organized bodies, the legislator adds, " the woman is considered as the field &c :" all organized beings, even vegetable bodies, are formed by the united operation of the seed and the field. Consequently the soil and the grain equally contribute to reproduction ; and it remains a doubt whether the son belongs to the owner of the field, or to him who is considered as the grain. The lawgiver reconciles the seeming difficulty by distinguishing parallel cases : " in some instances the prolific power of the male is chiefly distinguished," or is most important &c. To what different cases is their comparative importance referred ? In what instances is the real procreator chiefly considered ; and in what cases, the husband or owner of the field ? To this CULLU'CABHATTA replies, the real procreator is chiefly considered, when a child is begotten by a stranger on a wife not duly authorized for that purpose ; the husband, when the wife has been expressly appointed to raise up issue for him. Accordingly DUDHA,\* begotten by CHANDRA on the wife of VRISHPATI, who was not authorized for that purpose, was son of CHANDRA, not of VRISHPATI : VYASA, begotten by the sage PARASARA on SATYAVATI then unmarried, was son of PARASARA, not of DASAKA her foster father, nor of the king UPARICHA.

RA her natural father. The receptacle of the female is chiefly distinguished in some cases for example, DHRITARASHTRA and PĀNDU, begotten by VYĀSA on the two wives of VICHITRAVIRYA\* (AMBALICA and AMBALICA), were considered as sons of VICHITRAVIRYA. It should not be argued, that there is no want of ground for selection if it be agreed, that the produce shall belong to the owner of the seed, then it shall belong to him alone; otherwise it belongs to the owner of the field. The effect being produced by the intimate connexion† of the seed, there is in a manner no difference between them. But the field, being merely a receptacle, is inferior to the grain. MENU states this as an induction of common sense, and subjoins the reason in the second hemistich.

## CCLIV.

MENU — In general, between the male and female powers of procreation, the male is held superior, since the offspring of all procreant beings is distinguished by marks of the male power.

BECAUSE the produce is distinguished by unaltered marks of the seed, denoting the peculiar form of its prototype, therefore is the seed held superior. He expresses the same thought in the subsequent verse.

## CCLV

MENU — WHATEVER be the quality of seed, scattered in a field prepared in due season, a plant of the same quality springs in that field, with peculiar visible properties.

THERE IS no vain repetition, but an amplification of the sense, and a demonstration of the maxim contained in the preceding text. For this objection might have been made, seed cast on fertile soil produces the best fruit, sown in ungrateful soil, the worst, hence it should be affirmed, that intimate union

\* Forty sixt<sup>h</sup> of the last part

T

+ One of the categories in dialectical philosophy. It is the connexion of integrant parts with that of which they are parts—the connexion of class with individuals, of quality with subject of action with the agent or with the subject—in short it is a intimate and semiprimal connexion distinguished from conjunction, which is a sound and placed among qualities in a philosophical argument.

T

with

with the constituent particles of earth also contributes to reproduction. That objection is here obviated—seed, scattered in a field prepared in due season, that is, thoroughly tilled by the cultivator at the proper season for sowing, produces the best fruit, not so, if the land be tilled at an improper season can it be therefore argued, that intimate union with season also contributes to reproduction? Hence it should be only affirmed, that a distinct effect proceeds from a distinct cause. There is no difficulty, nor possible reply, for time, having no constituent particles, cannot be intimately united with substance, *as a plastick cause with an effect*

## CCLVI.

MENU:—CERTAINLY this earth is called the primeval womb of many beings, but the seed exhibits not in its vegetation any properties of the womb.

Should not be affirmed on the contrary, that a plant is first produced from the component particles of earth, and grows from the component particles of the seed. Were it so, plants of an uniform kind would be produced, when seeds of various sorts are scattered in the same soil, as plants of an uniform kind actually are produced, when seeds of the same sort are scattered in various soils.

## CCLVII.

MENU:—ON earth here below, even in the same ploughed field, seeds of many different forms, having been sown by husbandmen in the proper season, vegetate according to their nature:

2. Rice plants, mature in sixty days, and those, which require transplantation, *mudga*, *tila*, *másha*, barley, leeks, and sugarcanes, all spring up according to the seeds.
3. THAT one plant should be sown, and another produced, cannot happen: whatever seed may be sown, even that produces its proper stem.

ACCORDINGLY seed, watered in a vessel of hardest iron, puts forth a shoot, even without soil; but earth alone, sprinkled with water, produces no plant without seed. Does not earth, sprinkled with water, produce grass and other plants, which have not been sown? and is it not consequently found, that, in some instances, soil does produce plants without seed? It should not be argued, that the superior influence of the soil may be true in respect of grass and weeds; but the seed is sometimes chiefly distinguished in *the reproduction* of corn and the rest: hence they are alone mentioned in this place by way of illustration. There exists no argument to suggest this distinction, that the superior influence of the soil, as the natural cause of production, is deduced from the instance of grass and weeds; and the superior influence of the seed, from the instance of corn and useful plants. To the question proposed, the answer is, no; for even seed appertains to the *terrens* element.\* Thus it is

\* That is, all seed is earth, and the seed of grass and other weeds exists in the soil, though not sown there by human design: I should wish to attribute this sense to my text. T.

observed in a gloss on the words of UDAYANA'CHA'RVA, in his metrical rules of logick (" colours like those of a germin and of a scorpion"), that the stem of the plantain springs from the seed of burnt canes. The reason is, that all vegetable, mineral and animal bodies are produced from the minutest particles of earth, called atoms, by means of inchoative union; but such particles being in no respect dissimilar, since they are eternal, the plastick centers  $\ddagger$  of various kinds spring from adhesions mutually dissimilar. It should not be asked, how can barley, and other plants, which bear seed, such as corn and the like, be said to spring from a mass of earth alone, since such particles exist in the seed as well as in the mass of earth. A special adhesion is presupposed, which produces barley and other plants from component particles, to which a special adhesion belongs, connected with seed by its own nature, or by air fixed by the will of GOD : and, from the effect observed, an adhesion is presumed, which sometimes produces plants even from particles, to which adhesion relative to other seed belongs; as the stem of a plantain springs from the seed of burnt canes. In like manner, in the case of grass and weeds, they are considered as produced from such particles, to which an adhesion relative to the terrene element belongs. Neither is the superior influence of the soil thence inferred; for seed is not mentioned as useless to reproduction, nor as contributing to it in an inferior degree: and holy sages affirm, that the seeds of all vegetables were placed in the earth, subsequently to the creation.

*Sri Bhágavata* :—SURELY thou shalt not foolishly disobey my commands, and abandon the seeds originally created by the self existent and now concealed in thee.

By the expression "concealed in thee," it is intimated that all seeds were placed in the earth. Accordingly the divine CA'LIDA'SA says,

" THIS universe of moving and unmoving beings is celebra-

ted as the production of that prolific seed, which was sown in the waters by thee, O unborn being!"

And again;—" SHE, whom the wise call nature fostering all feeds."

THE first verse contains praise of BRAHMA' uttered by the Gods. "Unborn being! the universe, consisting of moveable and immoveable substances, is the production of that seed, which was sown in water by thee, at the beginning of the world, when water alone had been created." Consequently the earth, containing seed which is the source of animate and inanimate beings, sprung from the united operation of seed and water.

IT should be here remarked, that, the body of a son being produced from the union of the seminal fluids of the male with the uterine blood of the female, as declared by VASISHT'HĀ (CCLXXIII), both ought to be considered as important *in generation*; but this agrees not with the examples stated as analogous. If this be alleged, the answer is, the text of VASISHT'HĀ is intended to require the assent of the mother to the donation, sale or the like, though she be not chiefly distinguished, for *the first part* of it concludes by declaring, that both parents have power to give, to sell, or to desert a son. This does not contradict the superiority of the male compared with the female. It should not be objected, that there is no argument to support this induction, since the component particles of animated body proceed equally from seminal fluids and from blood. The seminal fluids are immediately connected with life, and therefore most important.

*Sri Bhágavata*:—To produce the body of a living being, by an act governed by destiny, a drop of male seed must enter the womb of the female.

ACCORDINGLY, even without a natural soil, DRO'N'A was produced from the seed of BHARADWA'JA deposited in a wooden bucket (*drōnf*),\* and

\* A vessel used in boats to throw out water, and for other purposes.

others in similar modes;† but no one ever sprung from the field alone without seed. BHAGIRATHA and others have been produced, like the self existent, by the power of absorbed contemplation. But the short lived men of the present day cannot procreate issue without a receptacle. Accordingly UDAYANA'CHAR'YA says, " By the experienced decline of birth, of initiating ceremonies, of science and the like, of power, of sacerdotal duties and acts of religion, the present race has degenerated." Common sense shows, that the component particles of the offspring are of the same nature with those of the father and mother, being *produced* from the intimate union of seminal fluids and uterine blood. Consequently, if the wife be committed to another for the sake of raising up issue, the offspring belongs to the husband of the wife; but, if there were no such declared intention, he belongs to the natural father. Thus do authors expound the law.

BUT some hold, that a son, procreated on the wife of another, is competent to perform rites, which respect another world, for his natural father only, not for the husband of his mother, though belonging of right to him: for it is said in the text of APASTAMBHA, "the wise deem such offspring useless in another world" (CCLI). MENU has declared, that the produce belongs to the owner of the field (CCLII); but he intimates, that rites, which respect another world, must be performed for the natural father (CCLIV). In some cases, that is, in respect of acts relative to another world, the prolific power of the male is chiefly distinguished; in others, that is, in respect of acts relative to this world and consequent to property, the receptacle of the female is chiefly distinguished.

IT may be accurately assumed, that the son of concealed birth becomes the son of his mother's husband, because there is no other owner (since the real procreator cannot be discovered;) and because he is deserted by his natural father.

THE son of concealed birth is described by VISHNU as sixth in rank (CLXXXV), to show, that he shall not take a full share and so forth, if

<sup>†</sup> According to the legends of the Purâs, AGASTYA sprung from the seed of PULASTYA deposited in a bull's testis ref. 1. T.

there be a son by a woman twice married, and a son of a young woman unmarried, who are superior to him by good qualities and class. This shall be further explained in the section on the son of a young woman unmarried. By the consent of almost every legislator, he may take the inheritance of a kinsman, as well as that of his father. According to *Hv̄ritā*, a nineteenth part shall be given to the son of concealed birth (CCXIX); according to the *Bṛahme purāna*, a sixth part (CCXVII); according to *Sanc'ha* and *Lic'hita*, one share (CCXLVII): for "the rest" intends the son by a twice married woman, the son of an unmarried girl, and the son of concealed birth. He claims the family and lineage of his mother's husband.

## SECTION VI.

*ON THE SON OF A YOUNG WOMAN UNMARRIED.*

HE is fifth in rank according to YA'JNYAWALCYA; for, after describing the fourth, or son of concealed birth, he thus describes the son of an unmarried girl.

## CCLVIII.

YA'JNYAWALCYA :—THE *cánina*, or son born of a young woman unmarried, is considered as the son of his maternal grandfather.

VASISHT'HA also assigns him the fifth place, but superior to the son of concealed birth and inferior to the son by a twice married woman.

## CCLIX.

VASISHT'HA:—THE son of an unmarried girl is fifth: he, whom an unmarried damsel produces, through lust, in her father's house, is called son of a young woman unmarried, and is considered as the male issue of his maternal grandfather.

## CCLX.

THE maternal grandfather becomes a father by the birth of that son, whom his unmarried daughter produces from a man of equal class: such a son may offer the funeral cake and possess the heritage.

"THROUGH lust;" explained in the *Retnácarā*, acting from the impulse of her own will. Ungiven signifies "unmarried." From an equal man; "from

" from a man of equal class ;" that is, from a man not inferior in class. Consequently, if an unmarried daughter, impelled by lust, receive the caresses of any man she may have chosen, and bring forth a son, that child belongs to his maternal grandfather, and is called the son of a young woman unmarried.

## CCLXI.

BAUDHA'YANA :—THE male child, begotten by a man of equal class on a damsel, whom he embraces unmarried, and unaffianced, in her father's house, is called the son of a young woman unmarried, and becomes the child of him, to whom she is afterwards given in marriage.

HE is considered as son of him, to whom that maiden is given in marriage. This disagrees with VASISHT'HA and YA'JNYAWALCYA. It should not be affirmed, that the word *cáñina* is here taken in the sense suggested by its etymology; consequently the son procreated while she was a maiden (*canyá*) is called son of a pregnant bride (*salód'ha*) and belongs to the married possessor of that woman; he is not named *cáñina*; and hence there is no contradiction. The son of a pregnant bride is separately mentioned by NA'REDA.

## CCLXII.

NA'REDA :—THE husband is considered as father of the son produced by *his wife, while she was yet a maiden*, of the son produced by a pregnant bride, and of him, who is secretly begotten on a disloyal wife: they are held entitled to shares of the heritage.

AND MENU, having described the son of an unmarried girl (CCLXIII), proceeds to the separate mention of the son produced by a pregnant bride (CCLXXXVIII).

## CCLXIII.

MENU :—A SON, whom the daughter of any man privately brings forth in the house of her father, if she afterward marry

marry her lover, is described as a son begotten on an unmarried girl.\*

NOR should it be affirmed, that the texts of VASISHT'HA and YA'JNYA-WALCYA suppose a declaration in this form ; " her son shall be mine." Were it so, she would be an appointed daughter, and it would be wrong to name her son as fifth in rank. If this be proposed, the answer is ; if the maternal grandfather have no male issue, then the son, begotten on his unmarried daughter, is considered as his son ; if the bridegroom have no other male issue, the child is considered as his son ; and if neither, or if both, have male issue, he is considered as son of both.

CHANDE'SWARA.

BEING son of both, though not begotten by one related by blood to the maternal grandfather, he claims the family of that ancestor only. In respect of double sets of oblations and the like, the practice is similar to that followed by the son of a wife considered as son of two fathers.

HERE a doubt occurs ; how can the child be son of the bridegroom, since the field did not then belong to him, and the son is not produced from his seed? Some reconcile the seeming difficulty by saying, the sense of the text is not rigorous in this instance. But others hold, that, grain being already produced in a field which had become waste, and that land being afterwards seized by any person, as the grain should also be taken by him, so, in the present instance also, *the offspring should belong to the subsequent possessor of the mother.* Should not that crop only, which is then produced, be taken by the present owner of the field; else, he might claim the crops long since produced from that field? In like manner, in the case of an unmarried girl, the father alone has a claim to the maiden, and her offspring therefore belongs solely to him. If this be alleged, the answer is, while she continues a maiden, the father is only acknowledged to have such right as empowers him to give her in marriage, and no other : accordingly he must not enjoy her or the like. A son, therefore, becoming

\* I do not alter the translation (Chapter 9, v. 172), but the commentary furnishes another interpretation.  
See a subsequent note.

the property of his mother, because he is produced from uterine blood, belongs to her alone.

How then are the words of VASISHTHA and YAJNAYAWALYA justified? It should not be argued, that the dominion of the father over his daughter is admitted by these sages, but that fruition is forbidden by positive law, like fruition of a female buffalo or the like held as property. Were it so, various opinions being delivered by sages, we should have no certainty, which ought to be followed. Nor should it be argued, that the different cases intended have been already distinguished, he becomes the son of his maternal grandfather, or of the married possessor of his mother, whichever has no son consequently, there is no want of certainty. If the right of one be ascertained from reasoning, it is nothing to the purpose, that another has no male issue. His maternal grandfather dying after his mother's marriage, if the child then became son of his maternal grandfather, and *if investiture and other ceremonies* of his regeneration be performed by the family of that ancestor, how can he also become son of his mother's husband, when this man subsequently dies? Since he cannot be truly son of both, by which family shall his investiture and other ceremonies be then performed? On this point there is no certainty. Again, the son of a pregnant bride would be similar to the son of an unmarried girl, for he also was *in fact* procreated at the moment when pregnancy took place but he is not given at the time of marriage, for the child is distinct from the woman to be wedded and, if he can be the son of two fathers, it is not proper to describe him as son of a single father. It should not be argued, that, as the clothes are also bestowed when a damsel is given with ornaments and clothes, so the fetus is also bestowed when a pregnant daughter is given the son of a pregnant bride, therefore, is not son of his maternal grandfather. Were it so, his affiliation being deduced from donation alone, a distinct partition, and separate share from that of a son given, would be improper, and the man, who marries a pregnant bride, might enjoy a daughter born from that pregnancy.\*

On this subject it is said, such offspring, as the son of an unmarried girl, belongs to both, because the mother has a claim to that child, since he

\* Because she was given to him but doesn't belong to him. — 7

sprang from her blood ; and the maternal grandfather has also a claim, since he then possessed dominion over the mother : hence the man, who espouses her, claims the mother's share, for a wife has no property exclusively her own (Book II, Chapter IV, v. LVI). It should not be objected, that her father alone has an immediate right to her son, though springing from her blood, because even the blood of the daughter was subject to the dominion of her father. Were it so, a mother would have no claim to her son born in lawful wedlock, and the gift of her child would not depend on her assent, as declared by VASISHT'HĀ. It should not be argued, that, admitting the mother's power, the father has nevertheless a sole claim to the son born in lawful wedlock, because he has a natural right, since the son was generated from his seminal fluids ; and the right accrues to him alone, even though the child be produced from uterine blood : a mother, therefore, has such a claim, as the father has to the son of a wife begotten by a kinsman, and as the maternal grandfather has to the mother. Nothing can prevent the right of a husband to the property of his wife, as declared by a positive text (Book II, Ch. IV, v. LVI). Nor should it be objected, that a step-mother would have a claim on the son of another wife, under the text which declares property common to the married pair (CCCCXV). That is admissible : it will be mentioned in the section on sons given, that the son shall offer the double set of oblations and the funeral cake for her father.

We do not discover the reason, why authors have said, that he succeeds as a son to his maternal grandfather, or to the man who espoused his mother, if either of them leave no male issue. It should not be argued from the text of YA'JNYAWALCYA (CCXXXVIII), that, as the want of male issue is mentioned as a prescribed condition in the case of the son of a wife begotten by a kinsman, so is the same required in the present case. Su'LAPĀ'NI, author of a commentary on the institutes of that legislator, refers this text to the case, where a son is begotten on a wife by a kinsman or stranger, with a previous declaration or implied intention, to which both parties assent, "the child shall be considered as the offspring of us both;" to which case NĀ'REDA likewise alludes (CCXXXIX). The words, "by one who has no male issue," are inserted in the text (CCXXXVIII), that the intention of the procreator may be fulfilled, if he need offspring ; for he, who has male

male issue, can hardly need a son begotten on the wife of another; and one, who has no progeny, of course does need that son. Nor should it be argued, that authors have said so, because his affiliation is null, if there be a son begotten in lawful wedlock, or other son of the *first* four descriptions. There is no argument to prove, that, if there be a son begotten in lawful wedlock, no other can be legal issue; the son of a pregnant bride and the rest are acknowledged *although other sons exist*; and the appointment of a daughter to raise up issue to MENU (the founder of memorial law), whilst he had legitimate sons, could not be justified. Nor should it be argued, that they have said so, to intimate his disqualification for offering the funeral cake to him, who leaves any one of the four sons first described, as suggested by the text of YA'JNYAWALCYA (CLXXXIX). That is mentioned in the text cited, to show, that the son of an unmarried girl is disqualified, if one begotten in lawful wedlock, or other superior son, exist, as a younger child is disqualified, if his eldest brother be living. Else, becoming the son of the bridegroom, because the paternal grandfather at that time had male issue *living*, he shall not offer the funeral cake, even though the son of the maternal grandfather afterwards die; for, having once become the son of the bridegroom, that relation cannot afterwards cease. Again; if both, a son of the body, and one begotten on a wife by a kinsman, exist, the right vesting in him alone, who was begotten in lawful wedlock, shall not the son of the wife offer the funeral cake, if the son of the body afterwards die. It must be therefore affirmed, that "on failure of the first" (CLXXXIX) signifies 'the first, qualified to perform the *frädd'ba*, and the like, not being alive.' But, if it be said, we do not deny the right of both to the son of a young woman unmarried, but we deny his competence, if there be a superior son to obstruct his claim; then this opinion coincides with our own. It is our opinion, say these lawyers, that by him is effected deliverance from the hell called *put*, and relief from the evils caused by the want of male issue, for his maternal grandfather under such circumstances and until his mother be married, and for the man, who weds his mother, if no other son be procreated by him on any wife.

FROM the terms used in the text of MENU (CCLXIII), it appears, that a child privately brought forth is alone considered as the son of an unmarried.

tiered girl, not one, whose real father is known: for, were it so, since the seed is superior to the receptacle, he would be considered as the son of his natural father.\* He is described by MENU as seventh in rank, and inferior even to the son given, the son made by *adoption*, and the son rejected (CLXXVIII). DE'VALA describes him as fourth in rank (CXC); and so does NAREDA (CLXXVIII). VISHNU and VASISHTHA (CLXXXV and CCLIX) assign to him the fifth place, but inferior to the son by a woman twice married, and superior to the son of concealed birth. HA'RITA virtually places him sixth in rank (CCXIX)†. To reconcile such seeming contradictions, authors have approved a regulation founded on the various degrees of virtue. The difference of class might be also considered: for instance, the son of an unmarried girl, being procreated by a man of inferior class, is sixth in rank, if imbued with bad qualities; or seventh, if imbued with very bad qualities. No one has described him as inferior to the son of a pregnant bride; what then shall be the rule if the son of an unmarried girl be deficient in virtue compared with such a son? By parity of reasoning, the son of the pregnant bride shall alone take the inheritance; for vice is stated in the following text as a fault, which excludes a man from inheritance; and it is reasonable, that one, who is, deficient in virtue, shall have a less share, if there be a virtuous son! . . . .

## CCLXIV.

VRIHASPATI:—THOUGH born of a woman equal in class, one, who is not virtuous, shall have no claim to the paternal estate; it is ordained to devolve on those learned priests, who offer the funeral cake to the deceased ‡.

BUT, if they be equal in good qualities, affinity by birth and legitimacy should be considered. He, who is a son given, is obtained by acceptance of donation; a son made by *adoption* was similar to unowned property; the son of an un-

\* It should therefore seem necessary to alter the version of that text, by substituting "a bridegroom," for "her lover," or by changing the construction "A son, whom the daughter of any man privately brings forth in the house of her father, is described as a son begotten on an unmarried girl and belongs to him who afterwards marries her." T.

† See v. CLXXVIII, where he is placed fourth in the enumeration of sons. T.

‡ The text at large is here inserted from a subsequent section. It was partially anonymous quoted in this place. See the interpretation in a subsequent chapter, v. CCCXIX. T.

married girl is obtained in right of the field; a son by a twice married woman is a child of the body, but produced by the adultery of his mother; a son of concealed birth is the offspring of the wife, *at the same time* possessing the general nature of unowned property. Consequently, a son by a woman twice married being procreated by a man himself, his affinity by birth is greater; a son of concealed birth being procreated by another, while the mother belongs to the adoptive father, his affinity is less: the son of an unmarried girl is inferior to him, because the adoptive father was unconnected with the mother at the time of his birth, but is not inferior, *considered as the son of her father*, because the maternal grandfather then had a right over the mother: these, however, are not begotten by the married possessor of the mother. A son made by adoption, and a son given may have been procreated by the lawful husband of the mother, but they are not related by birth to the adoptive father.

THE proof is subjoined: relation by birth, as declared by the law, must be affirmed superior to legitimacy, in respect of the right to inherit and to perform obsequies; else, that right would belong to the sister's son or other collateral, even though a son of a pregnant bride, or other representative, exist. Consequently, although a son given, or a son made by adoption, do exist, the son by a twice married woman has a prior title; and that is declared by VISHNU and VASISHT'HA. His inferiority, declared by YAJNYAWALCYA, must be explained by the difference of good qualities and class. For the distinction between a crop produced from seed belonging to the man himself, in a field appertaining to a deceased owner, and the crop produced from the seed of another, now deceased, in a field belonging to the man himself, must be deduced from the preeminence of the seed.

Is not the seed in this case similar to a waif? for the owner is not discoverable: but the field belongs to the adoptive father; and the son of concealed birth is therefore superior. A twice married woman belongs to her first husband, even though a second marriage actually take place: property being once vested, it is not acknowledged to fail, even though her husband die (CCCCLXXVII 2); the offspring of a twice married woman, being therefore produced in the field of another, is so far inferior. As for the son of a young woman unmarried, since a daughter, afterwards obtained

ed by gift from her father, has not already produced lawful progeny, her illegitimate offspring is inferior to the son of concealed birth. That should not be affirmed; for, the natural father being unknown, the son of concealed birth is allied to his adoptive father; and, the owner of the soil being unascertained, the son by a twice married woman is allied to his natural father.

SOME commentators hold, that a son, begotten on the wife of another, with an agreement in this form, "she is mine," is the son of a twice married woman, described by VISHNU as superior in rank. But, if no such agreement be made, he is inferior, being mentioned by YAJNYAWALAYA as sixth in rank. For example; the son procreated with the consent of the husband expressed in this form, "the offspring shall belong to us both," and the third son begotten on the wife of another, (who becomes son of his natural father, as shown by the text of GOTAMA,) are children of twice-married women.

## CCLXV.

**GOTAMA:**—LET not issue be procreated by appointment beyond a second son; else, the offspring shall belong to the natural father, or, by private agreement, to another: but a son, begotten on the wife of a living man, belongs to him, or, by special agreement, to another by whom he was procreated; or he shall belong to him, who maintains the mother, in right of that support; or to both, if they need sons.

CHANDRESWARA thus expounds the text: let not him, who is appointed to raise up issue, pass the second procreation, and beget a third or other son, in consequence of that appointment. If he do procreate further offspring, it belongs to the natural father. By a private agreement in this form, "all the progeny shall be mine," the further offspring belongs to another, namely to the husband of the mother. That offspring, which is begotten on the wife of a living husband, who is incapable of procreation, belongs to the husband, even though such offspring be third; or by special agreement, being procreated by another on the wife of a living husband.

he belongs to the natural father; but if another, namely the natural father, support the wife, the first issue belongs to him; if he do not support her, to the husband; or if the husband maintain her, to him: the term used (*bbartri*) here signifying the person, who supports her, the meaning is, that the son belongs to him, who maintains the mother, in right of that maintenance. But, if both need male issue, that offspring belongs to both.

BUT a son of concealed birth appertains solely to the mother, if the natural father be unknown.

### CCLXVI.

**NA'REDA:**—SOIL would not be *productive* without seed, nor is seed *productive* without soil: hence offspring is in law considered as belonging to both the father and the mother.

FATHER here signifies the natural parent. Hence the claim of the mother's lord arises solely from his right over her: and, the *Gálicá purána* expressing, that a wife affords conubial joy and male issue; she prevails before a daughter in respect of male issue; the son of concealed birth shall therefore succeed in the first instance; after him, the son of a young woman unmarried: such is the opinion of YAJNYAWALCYA. The son of an unmarried girl is described by MENU as seventh in rank; that proceeds on the supposition of his becoming the son of him, who marries the mother, as declared by MENU himself; he is indeed inferior, because he is not produced at a time when the adoptive father had property in the mother. NA'REDA, acknowledging the son of a young woman unmarried to become the child of him who marries her, describes him as superior to the son of concealed birth; that supposes transcendent virtue. This will become obvious from the further discussion of the subject. VISHNU and DE'VALA also suppose the son of an unmarried girl to be endowed with good qualities. In other cases, say these commentators, the seeming contradictions should be reconciled in a similar mode.

SANC'HÁ and LIC'HITA, DE'VALA and others, describe the son of an unmarried girl as heir to collateral relations; MENU, BAUDHAYANA and others describe

describe him as heir to his father and mother only. On this some lawyers remark, that his right of inheriting from his father, being declared in the institutes of MENU, which prevail over all other codes of law, is alone consistent with propriety. That is wrong, for, were it so, SANGHA and the rest would have no authority. Therefore, a son of an unmarried girl, considered as the child of two fathers, shall, in conformity with the text of MENU, take the estate of him, who became his father by marrying his mother, not the estate of that father's brother or other collateral but he shall take the estate of the brother, or any other kinsman, of his maternal grandfather considered as his father, in conformity with the texts of NAREDA and the rest. Such being the case, is there not an imperfection in the texts compared with each other? It should not be answered, that such a son of an unmarried girl is comprehended in the text of MENU under the appellation of a son rejected. Were it so, the son rejected by his natural parents, and such a son of an unmarried girl, would have equal shares. But it is not so, for he may be also comprehended in the text by the particle subjoined to the word rejected, (CLXXXVIII 2) *considering it as relative to another word understood.* The order, explained in the section on sons given, must be assumed as it is delivered by YAJNAYAWALCYA and the rest. It should not be objected, that still there is an inconsistency with the text of NAREDA, because he describes the son of an unmarried girl as the child of him who marries her, and as heir to the kinsmen of his father. The difficulty is removed by establishing, that he is considered as son of his maternal grandfather, in the text, wherein he is described as heir to kinsmen. It cannot be said, that what is contemplated by YAJNAYAWALCYA, is not contemplated by NAREDA. This subject will be further discussed in the section on sons given.

OTHER sons, says VRISHBAPATI, namely the son of the wife and the rest, shall respectively share a fifth, a sixth, and a seventh part (CCXLVI). That is, the son of a wife shall have a fifth, the son of an unmarried girl, a sixth; and the son of a woman twice married, a seventh. Thus the Retnacara. But it may be objected, what harm would there be in saying, the son of a wife, and other five sons, shall have a fifth, a sixth, or a seventh part, according to the difference of their possessing good qualities in an entire degree, or possessing them in a middle degree, or being wholly deficient

in virtue. HARI'ITA directs, that a twenty first part shall be given to the son of an unmarried girl (CCXIX). The Brabme purāna allots an eighth part to him (CCXVII), SANC'HA and LIC'HITA ordain one share each for the rest (CCXLVII), meaning the son by a twice married woman, the son of an unmarried girl, and the son of concealed birth. This brief exposition may suffice.

## SECTION VII.

## ON THE SON BY A TWICE MARRIED WOMAN.

HE is sixth in rank according to YA'JNYAWALCYA; for, after mentioning the son of a young woman unmarried as fifth in rank, he proceeds to describe the son by a twice married woman.

## CCLXVII.

YA'JNYAWALCYA:—A son begotten on the wife of *another*, whether she were *previously* deflowered, or not, is called the son of a twice married woman.

SOME hold, that the son, who is procreated on a wife authorized by her husband in the form abovementioned, whether she were previously enjoyed by him, or not, is the son of a twice married woman.

## CCLXVIII.

CA'TYA'YANA:—THE son begotten on her, who, deserting an impotent or degraded husband, takes a second lord, is a son by a twice married woman and evidently belongs to his natural father.

This text they also consider as relating to an appointed wife; for impotence, degradation, and other motives for obtaining a son of the wife, are here mentioned, *the first expressly, the rest by implication*. Consequently, in such cases, wherein the son of the wife becomes son of her husband, either the third child, or he, concerning whom it was agreed, "the offspring shall belong to us both," is called a son by a twice married woman; not so the child, begotten on a woman, who deserts her wedded lord, and connects herself with another man, saying "I am thine." That is wrong; for SU-LAPA'NI also describes the offspring of a woman, who has deserted her lord, as son by a twice married woman, "a male child, begotten on a widow mar-

ried again, or on a woman, who has deserted her lord for a second husband, is a son by a twice married woman.<sup>3</sup> She, who deserts her lord, is not appointed by any person whomsoever to raise up issue; nor would such an appointment legitimate the son of such a wife. Not truly becoming the son of a wife legally begotten by a kinsman or stranger, what prevents his being justly considered as a son by a twice married woman? for by that is meant generally, the male issue of a woman not duly authorized. Accordingly, it is said in the text of GĀTYĀYĀNA, "deserting a husband;" and degradation and impotence are there mentioned as the grounds of desertion. That term is merely illustrative; for the male issue of a wife duly authorized is also acknowledged as son of a twice married woman: else, considered as the offspring of his natural father, he would not be included among the twice sons: and YĀJÑAWALĀYA does not proceed so far as to mention desertion.

## CCLXIX.

MENU:—He, whom a woman, either forsaken by her lord or a widow, conceived by a second husband, whom she took by her own desire, though against law, is called the son of a woman twice married.

He, whom a woman, either deserted by her husband, or become a widow, produces by another man, with whom she has contracted a second marriage, is called the son of a woman twice married; and is considered as the offspring of his natural father. ; ; ; CULLUĀBHIĀTTA.

' HAVING contracted a second marriage with another man' is the meaning of the terms employed in the text. It is thereby intimated, that the child begotten by a man, who contracts a second marriage with such a woman, and not the male issue of her, who has been duly authorized by her husband, is the son of a twice married woman. Accordingly it is said in the *Retnācara*; ' he, whom a woman conceived by a man of equal class'; this is understood, and the subsequent term signifies connecting herself by marriage with another man, hence likewise SŪ'LĀPA'NI explains the term, "son of a woman twice married" (*spamerbhāra*), 'son begotten on a woman married again.' To this an objection occurs, that, were it so, the son,

son, who is begotten with the sanction of the husband, and who is considered as the offspring of his natural father, would not be included among the twelve sons.

Is it not admissible, that he also should be considered as exclusive of the twelve sons, like one, who is begotten by force on the wife of another, with, or without, the knowledge of her husband; for he is not mentioned as a son by any author? It should not be argued, as resulting from the text of MENU (CCLIV), that he is considered as the offspring of his natural father. That text is explained as declaratory of the proprietary right which is vested in the owner of the seed. Nor should it be argued, that he is so, because APASTAMBA describes him as performing rites relative to another world (CCLI), from which it follows, that he is considered as a son. The text of APASTAMBA expressing, "the wife deem such offspring useless," must be explained as reprehending the adoption of a son begotten on a wife authorized for the purpose. If this question be proposed, the answer is in the negative; for one, who has no other male issue, is shown to have a claim on the son procreated by him upon the wife of another; and the natural father did procreate a child for the sake of having a son to perform duties relative to another world; else the design, that the offspring shall belong to both, would be vain. If the right of property were alone sought, he would have omitted intercourse with the wife of another, and purchased a slave. Or, if he procreated the child to have a son begotten from love of pleasure, or spurious offspring, he must have acted under the sole influence of lust.

SINCE YAJNYAWALCYA calls a twice married woman, her, who is again espoused with solemn rites (Book IV, v. CLX), since the words " forsaken by her lord," occur in the text of MENU (CCLXIX); and a similar term (*vibāya*, deserting; a derivative from the verb *ha* to desert), occurs in the text of CĀTYĀYANA (CCLXVIII); and since, it is a rule, that reasoning must not be employed, where the sense of the text is obvious; therefore a son begotten on the wife of another, with the assent of her husband, is not acknowledged to be the son of a woman twice married; nor is the son of the fourth disloyal wife, as described by NĀREPA (Book IV, v. CLVIII 8), any more than the son of the first disloyal wife, and

and the rest, acknowledged to be son of a woman twice married! It should not be objected; then BUDHA would not be son of CHANDRA. Gods are not liable to be reproached by man. Otherwise, VYASA would not be son of PARASARA; for SATYAVATI could not by any means be described as a twice married woman, since she was not previously connected with any man. Again; since these are not included among sons by twice married women, they might fall within the description of a son any how produced irregularly, who is mentioned by VISHNU as twelfth in rank (CLXXXV); still the persons instanced are superior in rank, through the efficacy of devotion and power, as VISWAMITRA, springing from a military race, became a Brâhmaṇa; but, if devotion and power be wanting, such a son is of inferior rank. Accordingly persons so born have been mentioned by sages, with some difference of opinion, as superior almost to every son; and authors have derived a settled rule from the discrimination of devotion and the rest and from transcendent virtue.

If this be proposed, some reply, although YAJÑAWALCYA, when treating of the distinction between a woman twice married and a disloyal wife, describes the twice married woman as one again espoused with solemn rites, still the word (*punerbbu*), from which the term, "son by a twice married woman" (*punerbbava*), is derived, signifies only a woman who goes to a second lord. The term, which signifies desertion, in the text of CARYAYANA, must necessarily be affirmed to be merely illustrative; else, there would be a contradiction between two legislators, one describing the desertion as the act of the husband (CCLXIX); the other, as the act of the wife (CCLXVIII). How can an unmarried woman, who goes, through lust, to any man she may choose, be called a twice married woman; the word "twice or again" is irrelevant? It should not be argued, that her son is not considered as such. To deny the filiation of a son produced by a woman not previously enjoyed by another, at the same time acknowledging the filiation of a son produced by a woman previously enjoyed by another, is inconsistent with reasoning; even he is exhibited as relieving his father from religious debt, in the following text, which cannot be restricted to a limited sense.

## CCLXX.

SANCIIA and LIC'HTA, HARITA and PAIT'HINASI :—A FATHER thrives by a son, any how produced; and is indeed relieved from religious debt by his oblation of funeral cakes to progenitors.

To the question proposed these lawyers reply, ' her male issue must be included among sons of unmarried girls.' It should not be objected, that sages have not mentioned the offspring of an unmarried girl as son of the procreator. Though not expressly mentioned by sages, it is consistent with the reason of the law. ' Or the child begotten by a man himself on the wife of another may be technically named, *his son*, by a twice married woman, although the term "twice married" be not pertinent.' In this manner the superior and inferior rank of various sons by twice married women, settled according to the various opinions of many lawgivers, and their right of inheriting from kinsmen, ordained by some legislators and denied by others, are justified; and in the same manner the text of VISHNU, which names the son by a twice married woman as fourth in rank (CLXXXV), may be vindicated.

If the son of a paternal grandfather, begotten in lawful wedlock; and the son of a brother, begotten on a twice married woman, are competitors for a succession, which of them shall obtain it? This must be regulated by the right of offering the funeral cake. The nephew, being the son of a woman again espoused with solemn rites, whom VISHNU and the rest intend by "the son of a woman twice married," is the legal heir; but, if he be son of a woman not espoused with solemn rites, he is not competent to inherit; for that is forbidden by MENU. It should not be objected, that a second marriage is stated in the text of MENU (CCLXIX); yet he describes the son by a twice married woman as incapable of inheriting from a kinsman (CLXXVIII). The difficulty is removed by affirming, that he declares this son incapable of inheriting from a kinsman, supposing him to be the son of a woman not espoused with solemn rites by *the father himself*. Nor should it be argued, that, the institutes of MENU prevailing over every other code, the series, declared by him, should alone be received as the general rule, and the series, propounded by others, should be admitted only in the case of transcendent

virtue; and thus a son given, possessing a common degree of virtue, and the son by a twice married woman, being transcendently virtuous, shall have equal shares, and shall inherit from kinsmen. As in the case of witnessess, should an equal number on both sides give contradictory evidence, it is directed by YAJNYAWALCYA, that their characters shall be taken into consideration, so, in the present case also, the same principle must be adopted. Nor should it be objected, that in this case equality must be affirmed, because the holy legislators are very numerous, and it would be improper to notice a greater or small difference in the number of lawgivers expressing the several opinions. Still that law, which is consistent with reason, must prevail; as directed by YAJNYAWALCYA; "if two texts differ, reason, or that, which reason best supports, must in practice prevail." Now reason shows, that affinity dependent on birth shall prevail over affinity dependent on acceptance of donation.

## CCLXXI.

**MENU:**—THOUGH such, as are called sons for that purpose (*to prevent a failure of obsequies*), but were produced from the manhood of others, belong in truth to the father, from whose manhood they severally sprang, and to no other, except by a just fiction of law.

THE receptacle is inferior to the seed this must be acknowledged.

OTHER sons, says VRIHASPATI, (CCXLVI), namely the sons of a wife, of an unmarried girl, and of a twice married woman, shall respectively share a fifth, a sixth, and a seventh part. HARITA allots a twentieth part to the son by a twice married woman (CCXIX). The Brabme purana assigns to him the next share after the son bought, that is, an eleventh part. SANCCHA and LICHIRITA allot one share to each of the rest, namely to the son by a twice married woman, the son of an unmarried girl, and the son of concealed birth.

VRIHASPATI mentions the son of a twice married woman and others with disesteem (CCII). The reason of it is the adultery of their mothers.

## S E C T I O N . V I I I .

### O N T H E S O N G I V E N .

YA'JNYAWALCYA, having noticed six sons affiliated either to the seed or to the receptacle, proceeds to mention six other sons adopted without any such claim; and first he describes the son given, because he holds preeminence among them.

#### CCLXXII.

YA'JNYAWALCYA.—THAT son, whom his father, or his mother *with her husband's assent*, gives to another, shall be considered as a son given:

He is seventh in rank, according to YA'JNYAWALCYA; for he describes him immediately after noticing the sixth, or son by a twice married woman: The particle (*viz.*, or) is in this place connective,\* which is one of its senses, according to AMER'A. Thus, if both his father and mother give him to another person for adoption, he truly becomes a son given; this supposes both his mother and father to be living; but, if either of them be dead, the boy may be given by the survivor; however, should the man be deceased, the child must not be given by the woman without the assent of her husband *declared before his death*, as ordained by a special text:

#### CCLXXIII.

VAS'ISH'THA:—A son, formed of seminal fluids and of blood, proceeds from his father and mother as an effect from its cause: both parents have power for just reasons, to give, to sell, or to desert him; but let no man give or accept

\* This is disputed in the subsequent commentary. I have therefore translated the word in its common & positive sense, and supplied the fine reservation as in the text of MIRKO, v. CCLXXV. T.

+ A part of this text has been already cited in Book II, Ch. IV, v. VIII. T.

an only son; since he must remain to raise up a progeny for the obsequies of ancestors. Nor let a woman give or accept a son, unless with the assent of her lord. He, who means to adopt a son, must assemble his kinsmen, give humble notice to the king; and then, having made an oblation to fire, with words from the *Véda*,\* in the midst of his dwelling house, he may receive, as his son by adoption, a boy nearly allied to him; or, on failure of such, even one remotely allied: but if doubt arise, let him treat the remote kinsman as a *Súdra*. The class ought to be known, for through one son the adopter rescues many ancestors.

As an *only* son should not be given, so he should not be sold or deserted. Sale is a great offence; even though made in a season of calamity, when a maintenance cannot be provided; desertion is a great offence, because the family becomes thereby extinct. Thus the *Pracásá*. Let no man accept an *only son*, because he should not do that, whereby the family of the natural father becomes extinct: but this does not invalidate the adoption of such a son *actually given to him*. Some hold, that, if an *only son* be given by a woman unauthorized by her lord, the donation is void; as if he had been given by a person who was insane or the like. "Let not a woman give a son without the assent of her lord: the reason is, that a thing, belonging to two persons, ought not to be given by one without the assent of the other. If a donation of joint property, made by one parcer, be valid, why should not the gift of a son, who belongs in common to his father and mother be likewise good in law? If single property, arising from the single efficient act of two persons, be attributed to both, then, should the thing be given away by either of them, that property being devested, the right of both is lost:

relation is one. Thus the reason, why a son has property in the paternal state, must be deduced from his birth, being caused by his father; but the reason of a mother's property in her son must be deduced from his proceeding from her blood; and the reason of a father's property, from the child's proceeding from his seminal fluids. Although the same cause might here have been invariably assigned for the same effect, that must not be done in the present instance, because these different causes are established in conformity with the texts of sages.

From the phrase, "let not a woman give a son," as from the expression, "let not a parcer give away joint property," does it not appear simply, that a gift ought not to be made, but the donation is not void? Then it should have been only said, "let not one give a son without the assent of the other;" or the husband ought not, by his sole act, to alienate property held in common with his wife. The husband, therefore, has the primary right over his son, as appears from texts (CCLIII. 1 and CCLII. 4); but the wife, being dependent on him, has a secondary property, because the son was produced from the united operation of her blood with the seminal juices of the father; and because she bore the child in her womb. Hence gift made by a dependent person, without the assent of the principal owner, is void; and this is accurate, according to the opinion of those, who contend for the right of the husband to the property of his wife (Book II, Chapter V, v. LVI).

"Nor let a woman accept a son without the assent of her lord." If a son is accepted by a wife without the assent of her husband, her property in that child is valid, but not his performance of filial duties; he can neither possess the heritage nor offer the *sraddha* or the like, for it is shown, that the adoption of a son is the act of the man: in no code of law is it found, that adoption can be the act of the woman. It should not be argued, that the offspring of an unmarried girl and the rest become adoptive sons through the act of a woman. Although she produce the child through him, his filiation is valid by the choice of the father, or by the authority of law, not by the choice of the woman. Thus the mention of gift by the joint act of the father and mother is intended to show the means of effecting

fecting a donation productive of no immoral consequence; but the gift made by the man alone is valid. However, the mother's claim is not annulled by his donation. But a child, belonging to his natural mother, and to his adoptive father, is not truly considered in practice as a son given; the adopter should therefore obtain the assent of both parents.

THE form of adoption is subjoined; "he, who means to adopt a son, must assemble his kinsmen;" this is intended to show, that a son, known by kinsmen to have been adopted, shall take the inheritance, and perform the *śrāddha*, and the like; and they shall not molest him. The notice given to the king is intended for the same purpose. The oblation to fire with holy words from the *Vēda* is an *unessential* part of the ceremony: even though it be defective, the adoption is nevertheless valid; for no one admits, that the principal object is unattained, if an *unessential* part be defective.

UNDER the rule of TACSHĀ,\* ("what is *moral* or *imperceptible*, is not a part of that which is *physical* or *perceptible*,") the oblation to fire with holy words, which is *relative to moral effects* and must be deduced from the positive precept alone, is not an *unessential* part of the investiture of property, nor of the adoption of a son, who is *physical* or *perceived by the senses*; in like manner as the sacrifice on consecrating the site of a building is not an *unessential* part of the house, but an important act. The meaning is this: the rule of JAIMINI, ("that, which is *unproductive*, is a part of that, which is *productive*, and which it attends") shows, that an act, which is associated with the principal act or with one producing the effect chiefly considered, and which confirms the moral merit proceeding therefrom, but which does not itself produce the effect chiefly considered, is an *unessential* part; now a house or the like, being *perceptible* or *physical*, does not produce moral merit; hence the definition of *unessential* part is inapplicable to the sacrifice performed on consecrating the site of a building; but it is not true, that the wall cannot be erected, nor the house roofed, without a sacrifice to consecrate the ground. Is it therefore proper to affirm, that, without an oblation to fire with holy words from the *Vēda*, the moral benefit of

\* Among the rules of prosody and rhythmical recitation attributed to the fabulous serpent of hell called TACSHACA.

adopting a son is not obtained; but it is, if that oblation be duly made; since the simple adoption of a son does not produce moral merit?

If this be proposed, the answer is; admitting this oblation to be an independent and principal act, like the sacrifice on consecrating the site of a house, still the adoption is not void, if that oblation be omitted. But in fact moral merit is produced by the adoption of a son; for it has no other effect. It is not by that adoption, that the child becomes a son; for he was already born *the son of another.*

If it be objected, that he is made the son of *the adopter* himself, that objection is answered by asking, does that affiliation to *the adopter* himself consist in the property vested in him, or is it attended with the power of taking the inheritance and performing the *sraddha*? The first is not accurate; for the property vested in the accepter is universally admitted, even though the oblation to fire with the mighty words\* earth, sky, heaven, be omitted, as it is if tonsure and other ceremonies be neglected; since the law, in that case, declares him a slave (CLXXXII). If the second be affirmed, it may be asked; does the power of performing the *sraddha* signify ability to do acts relative to funeral obsequies and the like? If it be performed by a traveller, although acceptance for the purpose of adoption had not taken place, his offer of the funeral cake does not become valid by his recital of the proper texts from the *Veda*. If it be urged by way of reply, that the deceased does not attain bliss by his recital of holy texts with the oblation of a funeral cake; the answer is, this reasoning is identical: for bliss, it must be said, is attained through an act performed by one, who was qualified for it; and the qualification consists in the performance of an act capable of effecting the attainment of bliss; these propositions reciprocate.

It may be argued, that the attainment of bliss through the act of religion performed by one, who was qualified for it, must be thus particularly explained: Bliss is attained through the act of religion performed by a son of the body, or by a son of the wife for a man who leaves no issue by himself begotten; it must be therefore assumed, that, on failure of superior sons, bliss is attained

\* Collectively called *Metayātriki*. See Mīmā, Chapter 2, c. 76.

through the act of religion performed by a son accepted for adoption the right of performing acts capable of effecting the attainment of bliss is therefore ascribed to this son in consequence of acceptance, and the ascribing of that right to him arises from making that the object of the acceptance and the support whereon rests the object specially contemplated in performing the sacrifice with mysterious words from the *Veda*. To this argument the answer is, the acceptance and other acts of adoption being past before the attainment of bliss, a particular faculty called moral merit must be established\*. It should not be argued, that, although acceptance be a past event, the past existence of acceptance operates to produce the effect. Were it so, the past existence of an act always producing the consequence, there would be no argument to prove the moral relation of cause and effect or, admitting, that the past existence of acceptance does produce the effect, it would be physical or perceptible, but this has been already answered.

Is not the oblation to fire with mysterious words no part of the adoption, but independent of it and an attribute of him, who is qualified for performing obsequies? "An act of religion performed by one who was duly qualified," therefore signifies an act of religion performed by an adopted son, with a view to whom an oblation to fire with mysterious words has been made, and thus, should the oblation to fire be omitted, the power of performing obsequies being consequently wanting, the affiliation is null. It should not be objected, that, since it is burdensome to make both acceptance for adoption and the oblation to fire attributes of the person qualified to perform obsequies, acceptance alone should be considered as an attribute or requisite condition. There exists no argument, by which it can be distinguished whether the acceptance, or the oblation to fire, should be considered as the requisite condition, both ought

\* A particular *samskara* called *apurva*. I have explained in former notes the idea wch seems to be attached to *samskara*, wh ch I translate sicut y *Apurva* here translated merit is in a general sense the relation between cause and effect not consecutive. According to what system *apurva* is considered as a *samskara*, I know not in dialectics they are distinct qualities and the *M manfa* does not admit *apurva* in a philosophical arrangement. However, the relation between a past event considered as a cause and a remote event considered as its effect may be called a faculty, or power to produce that effect, if there be any subject to which the faculty can be attributed in this view, the son has in consequence of adoption, the faculty of procuring bliss for his father. T

+ It has been already explained that, according to one system of philosophy, the cessation or past existence of an event is considered as positive, and subsisting for the purpose of concurring with another event considered as its effect. T

therefore to be deemed attributes of him, who is qualified to perform obsequies. Again; since it is true in law, that affiliation is not complete by acceptance alone; therefore tonsure and other ceremonies performed by the adopter's own family must be also affirmed to contribute to affiliation: in like manner, since there is no reason for selecting one in preference to the other, the oblation to fire with holy words from the *Véda* should also be considered as contributing to adoption. But the notice to kinsmen and other formalities appearing to be intended for an evident or popular end, an imperceptible or moral purpose ought not to be attributed to them. Is it not thus proved, that adoption is not valid, unless an oblation to fire with holy words from the *Véda* be duly performed?

WHEN this argument is proposed the answer is, yet notice to the king and convocation of kinsmen are necessary for a seen or secular purpose, namely that the adopter's brothers and the rest may know the name and class of the child, and so forth, after thoroughly investigating all circumstances: for this reason, (*the purpose not being indispensable;*) affiliation is in some instances valid even without this unessential part of the ceremony. In like manner, should the oblation to fire be partly omitted, in consequence of inability to complete it, the adoption is sometimes good in law, as marriage and the like are valid in similar circumstances.

THE meaning of that observation of VACHESPATI BHĀTTĀCHARĀYA, may be thus explained; if the intention of the party be only declared in this form, "I give you this damsel," she continues a maiden, and the accepter does not become her husband; on the contrary she may be given to another, as a girl called PRITIKA was bestowed by the father of VASUDEVĀ on CUNTHIKA, and afterwards given by him to PĀNDU; but if the intention of the party be thus expressed, "I give this damsel to be thy wife," she becomes the wife of the accepter, and cannot with propriety be given to another; this alone constitutes marriage; so, if a gift be made declaratory of property only, then property alone is conferred, as in the case of a slave; but if the declared intention be expressed in these words, "I give him to you as a son," and if the accepter's intention be thus expressed, "I take him as a son," he becomes a son; nothing else is required.

Since the Cālīcā purāna declares filiation null, if tonsure and other ceremonies, preceded by the enunciation of the family name, be omitted (CLXXXII), this is necessary to assist adoption. But since no one has declared, that filiation is null, if the oblation to fire with holy words from the Vēda be omitted, the validity of adoption by gift and acceptance only, without such an oblation, is fully proved by reasoning. However, as a son is produced from secundation without the recital of holy texts from the Vēda, but a son is perfected by the recital of them, (for YĀJNYAWĀLCĀYA declares, "sin, arising from the seed and the womb, is expiated by the ceremony of tonsure and by those which precede it;") so, even without an oblation to fire sanctified by holy words from the Vēda, adoption, the object of that act of the will called acceptance, is indeed valid, but no special perfection arises. On the other hand, tonsure and other ceremonies, preceded by announcing the family name of the natural father, having been already performed, the claim to the original family cannot be forfeited; how then can the child become son of another? On this and similar reasoning is founded the text of the Cālīcā purāna, which we revere as the commandment of our master. Without minute investigation, it is admitted, that the adoption of a boy, for whom tonsure and other ceremonies had been already performed after announcing the family name of his natural father, is void.

It should be here considered, that, if the adoptive father die after taking as a son a boy under the age of five years, but tonsure and other ceremonies have not been performed, the adoption is nevertheless valid; hence the celebration of these ceremonies with the family name of the adopter himself ought not to be considered as contributing to the adoption, but the circumstance of tonsure not having been performed with the family name of the natural father should be so considered: Whence is this deduced? From the text of the Cālīcā purāna (CLXXXII 1), which shows that the circumstance of tonsure and other ceremonies not having been performed with the family name of the natural father does contribute to the validity of adoption. It should not be argued, that, since there are no grounds of selection, both ought to be considered as contributing thereto. The purpose being answered by one, it would be burdensome to establish, that both contribute to adoption; and there is no occasion for so doing. Nor should it be argued,

that

under the age of five years, would not be a given son duly adopted. Say not, that is admissible. The law does not show adoption to be void, when the principal part of this ceremony had not been previously performed. It should not be said, that the word tonsure must extend to that part of the ceremony which effects the purpose, but that the *stradd'ba*, not effecting the purpose consisting in tonsure, is not included in that term. There exists no argument, on which this can be established.

THE adoption of a child taken at the age of five years, but for whom tonsure and other ceremonies were afterwards performed under the family name of his natural father, would be nevertheless valid for the ceremony of tonsure performed under the family name of his natural father is void, because he did not then belong to that family, and because the ceremony is performed by one who had no right to do so, until he truly became son of the adopter, and certainly belonged to his family; not having been already initiated under the family name of his natural father when the adoption took place. It should not be objected, that, were it so, the text of the *Cālīca purāna* (CLXXXII 1) would be unmeaning. That text is only intended to invalidate the adoption of a boy, for whom the ceremony of tonsure had been performed within the third year, and who is afterwards accepted for adoption within his fifth year. In this case whose son does he become? He becomes the slave of the person, who accepted him for adoption.

ON this subject it is said, the inference ought to be deemed admissible; for the ceremony of tonsure thus performed is void, and a repetition of it is needed, but that cannot take place, since there is no person capable of performing it, because he is not truly son of either, for you must affirm, that by the relinquishment of the giver the boy ceased to be his son, or to belong to his family, and that his affiliation is void. It should not be objected, that the text of the *Cālīca purāna* (CLXXXII 2) would be unmeaning. It is intended to confirm the sense of the preceding verse (CLXXXII 1). A boy therefore, being accepted under the age of five years, is in law a true son of the adopter, even though the ceremony of tonsure have not been performed. Accordingly, if his filiation were incomplete until his marriage, which is included in the term, "and the like" (CLXXXII 2), he might espouse a

damsel related to the adopter within the degree of a *sapinda*; and the affiliation of one, whose marriage happens not to take place, would be void; and, tonsure and other ceremonies for men of the servile class being optional, if these be not performed, the adoption would be invalid; these and other difficulties are obviated; for the implied object is to except one, *for whom* the ceremony of tonsure has been performed under the family name of the natural father.

It should be here remarked, that no law is found, expressing that a son shall not be adopted by one, who has not contracted a marriage: nor any law, that a boy, *known by his family name to be of the same primitive stock*, shall not be adopted. But, in fact, if the adopter, wilfully omit any of the ceremonies, either that tonsure, or any other which is ordained for his class, the boy becomes a slave; if the adopter die, while disposed to perform those ceremonies on a day subsequent to acceptance, the adoption is nevertheless valid; that disposition must be understood to be an intention *which may be expressed in these words*, "I will perform them." This should be admitted as a rational interpretation: else, his affiliation being imperfect when such an adopter died, the estate would be taken by a brother's son; afterwards; when the affiliation was perfected by tonsure subsequently performed by the kinsmen, the son would be destitute of property; or, being then unconcerned with mourning, he might himself cause the ceremony of tonsure to be performed, and *thus becoming a true son* present *rite to the funeral pile of the deceased*, which would be inconsistent with common sense.

In the double set of oblations, to whom shall he offer the funeral cake, with which he utters the words: "maternal grandfather?" On this some remark, that to say, he shall offer it, to the father of her, with whom his adoptive father is married, would not be pertinent, for a son, adopted by one who had no wife, would have no maternal grandfather's line. It should not be argued, that one, who has no wife, being consequently excluded from the order of a householder, cannot properly adopt a son, this being an act mentioned when treating of the order of a housekeeper or married man. There is no argument to support such an induction. Accordingly, it is recorded in the *Bhadrata*, that *PANDU*, having gone to the forest \* with his wife, adopted

\* And having consequently entered into the order of devotion.

sons begotten on her by *Prargers*; and it is recorded, that VYĀSA and others, who had contracted no marriages, nevertheless obtained sons, namely SUCADE'VA and others. He, who happens to have no wife (whether he have contracted no marriage, or his wife have died or be forsaken by him), either has not completed the ceremonies, which perfect *wife born men*, or belongs to no order, but it is contrary to common sense, that, although the form of adopting a son given have been observed, the adoption should be void.

If a son be adopted by a man married to two wives, he would have two maternal grandfathers and *should claim as maternal ancestry* both their lines of forefathers. This seeming difficulty is thus reconciled, although there be two sets of maternal ancestors, they should be jointly considered as males of ancestors, and they should be thus named in performing the *Fradd'ba*, "such a one maternal grandfather sprung from such a primitive stock! such a one maternal grandfather sprung from such a primitive stock! to thee (*to each of you*) this funeral cake is offered," and so forth, as is done by the son of the wife considered as a son of two fathers. Thus some reconcile the difficulty.

MALTS only need sons to relieve them from the debt due to ancestors. Accordingly, the sage MANDAPĀLA, desiring admission to a region of bliss, but repulsed by the guards, who watch the abode of progenitors, because he had no male issue, accepted a bird for his consort, that he might earlier obtain a son; and it is recorded in the *Mibabbārata* and other works, that JARATCA'RŪ, RUCHI, and other males, have taken wives for the sake of obtaining male issue, but it is nowhere said that a woman has taken a husband for that purpose. Accordingly in the double set of oblations, it is indispensably necessary that the son should perform the *Fradd'ba* for the paternal line, not for the line of his maternal grandfather, but it is simply reprehensible in one, who performs the *Fradd'ba* for the paternal ancestors, not to perform it also for the maternal grandfather and his progenitors. Consequently, since the *Fradd'ba* may be performed without noticing the maternal grandfather's line in a subordinate double set of oblations and the like, the *Fradd'ba* for the maternal ancestors is not requisite to the completion of the obsequies performed

common to all." In that remark he delivers this opinion: by the father's relinquishment, his funeral rites, and the son's claim to his estate and family, are annulled; by the mother's relinquishment also, the son's claim to her estate and family is cancelled; but the father of the natural mother not having relinquished the child, how can the boy's claim to perform his *śrāddha* and take his inheritance be annulled? The *śrāddha* for a maternal grandfather is not a consequence of his property, for he has no property in his daughter's son; it is grounded on the birth of the child from a daughter procreated by him; and that descent is not in this case lost. If it be asked, since his descent from his father and mother likewise is not lost, shall he not therefore perform the *śrāddha* for them also? the answer is, the right of performing obsequies and the like for a father and mother does not arise from birth alone, but from the relation of a son to his parent: if he be forsaken, although the descent remain the same, the relation of parent and child does not subsist; for he is not numbered among sons: and, although the definition of a son born in lawful wedlock be applicable, he must be excepted under the authority of the law, since those, who are technically called sons, are alone qualified to perform the *śrāddha* and the like.

STILL shall he not take the inheritance, and perform the obsequies, of the natural father of his natural father; for, grandsons not being technically so named, like sons, "born from a son" is the definition of a grandson in the male line? One born from a son is not *the meaning of "grandson in the male line,"* but son's son is *the meaning of that term;* else the adopted son of a son would not be a grandson: and, if that inference were deemed admissible, it would be incompatible with the text of the *Brāhma purāna.*

## CCLXXIV.

*Brahme purāna:*—THEY claim descent from a different primitive stock, are separate in the oblation of funeral cakes, and propagate a distinct race.\*

It cannot be true, that he, who is son of a son, is not a grandson in the male line; and it is proper to affirm, that he continues the race of the pater-

\* See the remainder of the text at v. CCLXXVII.

nal grandfather. "May not the phrase, "propagate a distinct race," signify "continue the lineage of the father," not "continue that of the paternal grandfather?" It is inconsistent with common sense to say, that a line of descendants, uninterrupted like the stream of the Ganges, is the race of the father alone, not of the paternal grandfather. Or, if that were deemed admissible, the expression, "claiming descent from a different primitive stock," would be inaccurate; for it signifies claiming descent from that sage (CASYAPA or another), who is the founder of the family (or described in the *Veda* as the source of descent) of a different person from the natural father, meaning of course the adoptive parent: consequently, if a son, born in a family claiming descent from ŚĀNDILYĀ, be adopted into one, which derives its origin from CASYAPA, but do not become the grandson of the adopter's father, CASYAPA would not be the source of his descent. Again; what would be the meaning of "separate in the oblation of funeral cakes?" It does not signify bound to offer a funeral cake to a separate person, that is, to one different from the natural parent; for, were it so, all persons would be "separate in the oblation of funeral cakes," since they present such offerings to their mothers and to their paternal and maternal grandfathers and the rest. Therefore "funeral cakes" must here denote relation within the degree of a *pinda*; and the term above quoted signifies, that the relation by the funeral cake is different from that which existed through the ancestry of the natural father. Hence it is deduced, that, omitting the succession of natural progenitors, the funeral cake shall be offered, in the double set of oblations, to the ancestry of the adoptive father. Thus it likewise appears, that the paternal grandfather enjoys the funeral cake offered by that adopted son. Or the word *pinda* may signify the set of ancestors who have reached the abode of progenitors. Still relation by the funeral cake virtually appears to be the sense of the word; for the derivation of the term *pṛitīśīpūda* exhibits, as its sense, "those, whose sets of ancestors are distinct." If a brother's son be adopted, still, since he enters the family of the adopter, the set of ancestors is distinct, as a cow and sheep are different from a cow and goat.

It should not be objected, how can the term maternal grandfather be properly used, since it signifies mother's father; but he (the natural grandfather)

father) is not a mother's father, since his daughter is no longer mother of the adopted son? Although she be not then considered as such, yet, since she was mother of the child at some former time, the relation of her father is not lost; the word *mátri*, from which the term *mátmába* or maternal grandfather is derived, signifies natural mother only; and, although such relation cease by her death, still the word mother is used in performing a *sráddha*.

THE father's right in his son, who is given away after the death of the mother, is defested by his donation, but, since she has made no gift, shall not the son perform the *sráddha* in consequence of her subsisting right? It should not be answered, that, since the text of VASISHTHA describes gift as the act of both (CCLXXIII), a son, whose mother is dead, ought not to be given; else, a son, whose father is dead, might in like manner be given away by the mother. Since a subsequent phrase; "let not a woman give or accept a son &c." specially forbids her giving away a son without the assent of her lord, it is thereby intimated, that, if the wife be living, her cooperation is required for a donation made by the husband; but, if she be not living, there is no objection to a gift made by the husband singly. When this argument is proposed, the answer is, that inference is admissible. But, in fact, a son, whose mother is dead, ought not to be given away; it contradicts common sense, that one should be father, and the wife of another be mother, of an adopted son. If gift be founded on the cooperation of the mother, then such a contradiction to common sense does exist in this case; for the mother's gift of the son becomes necessary. Thus some expound the law.

BUT, CHANDESWARA explains the phrase, "both parents (the father and mother), have power to give a son," the father has *that* power, and the mother has *that* power, for it is a rule, that, in the apposition called *dwandva*, each term, whether expressed first or last, is severally taken and intended. The lawgiver also forbids the attempt of a mother to make a gift without the consent of the father: "nor let a woman give or accept a son, unless with the assent of her lord." But there is this difference: if the father be living, a mother can only make a gift with his assent; but, if he be not living, she may do so even without his previous consent.

ACCORDING to this opinion, the husband's gift of a son is valid, without his wife's consent, even during her lifetime; but the wife's property in her son is not thereby devested. If this be affirmed, the answer is, what difficulty is there? It may, however, be questioned how a son, given by a widow without authority from her deceased husband, can become the son of a male. But others deduce, from the phrase, "both parents have power &c." that gift is the several act of each of them: but a donation by a woman is there forbidden; "let not a woman give or accept a son, unless with the assent of her lord." It should not be objected, that the word mother, in the expression, "both parents (the father and mother) have power &c." would be unmeaning. It shows, that she may confer an equal right with her own. But in this case, even though she transfer such right, the affiliation is not valid; for the adoption of a son consists in *the acquisition* of an equal right with the man's. It should not be argued, that adoption is valid even in the case of a gift made by a widow, because she is then independent by her husband's death; and the accepter acquires property in the son as it were by occupancy, since there is no *existing* claimant of that right. Still she cannot properly confer an equal right with that of her lord; and the claim to a son, acquired by occupancy, is not acknowledged; else, property by occupancy in any child, whose father and mother are deceased, being admitted, he would become in law the adopted son *of a guardian*. It appears, that a woman is dependent even during her widowhood; since a text (CCCCLXXVII 2), requires her to preserve undefiled the bed of her lord.

competent to perform obsequies and the like for his deceased natural mother? That is admissible.

## CCLXXV.

**MENU:**—HE, whom his father, or mother *with her husband's assent*, gives to another as his son, provided that the donee have no issue, if the boy be of the same class and affectionately disposed, is considered as a son given, *the gift being confirmed by pouring water.*

THE particle *va*, “or,” occurring in the text of YĀJÑAWALCYA (CCLXXXII), in this text of MENU, and in that of VISHNU (CLXXXV), does it not appear that each of them may severally make the gift? It should not be asserted, that the particle *va* is in this place connective. Were it so, the expression of VASISHT'HĀ, “nor let a woman give or accept a son,” would be unmeaning; the law shows, that gift should be the joint act of both parents. It should not be argued, that this very maxim is confirmed by the expression, “nor let a woman give or accept a son;” else, it might be understood, that each may transfer his own right. Were such the design, it would be said, “let not one singly give a son;” to prevent a donation made by the husband alone: since the text, which describes him, who is called a son rejected (CCXCI), admits the filiation of a boy forsaken either by his father or his mother and adopted by a stranger; it might be supposed that one given by either of them became *in law* a son given. It must therefore be affirmed, that the property of both departs, if the boy be given by either of them: else, how could a boy, forsaken by his mother, become *in law* a son rejected?

THAT inference is denied; for the seeming difficulty is removed, if “given by either of them” be explained given by the father, or by the mother *with her husband's assent*. It should not be objected, that there is no argument on which this induction can be established. The unreasonableness of the ownership of one being forfeited by the gift of another is a *sufficient* argument. Admitting that adoption is *in one case* void, because the father's property is not lost by the gift of a mother unauthorized by her husband, still, the property of the mother, who is subject to the father's power, being

being devested by his gift, would not her son be incompetent to perform her obsequies and the like? If the property of any one be forfeited by the gift of him, to whose power he is subject, then the property of the son in that, which was obtained through the indulgence of the father, would be devested by the father's *subsequent* donation. Therefore the property of the giver alone is devested by gift; the adoption of a son given is valid by the donation of the father; but given by the mother unauthorized by her husband, it is void. Such is the induction. But, since it is not a fit practice for a son given to perform the obsequies of his former mother, it is proper to take for adoption a boy, whose mother is living, and who is given both by her and by her husband. This brief statement may suffice.

WHAT some affirm to be CHANDE'SWARA's notion, is questionable. They hold, that, if an orphan give himself, he is a son selfgiven; but if one, whose mother is living, and who is bestowed by her, give himself, he is *in law* a son given, as suggested by the particle (*vā* "or") in the text of YAJNAYAWALCYA (CCLXXII). That the boy's gift of himself confers a right equal to his father's, appears from the definition of a son selfgiven: and this is reasonable, *say these lawyers*; for after the death of the father, his whole wealth becomes the property of the son, and a donee has property in that which is given to him by that heir; so, after the death of the father, the son has a proprietary right over himself, and that right is transferred to the donee by his gift: hence a boy, whose father and mother are living, but who is forsaken by them, becomes by his own donation a son selfgiven. Would not a boy, given by his mother after the death of the father, thus become a son selfgiven? That is admissible, *say these lawyers*; but, in fact, a right equal to that of the father is conferred by the son's donation; and, by the mother's gift, every claim is cancelled. That opinion is questionable; for adoption consists in the acquisition of a right equal to that of the father: if that be effected by the boy's own donation, he is a son selfgiven; if it be effected by the father's gift, the boy is a son given: such is the distinction. But if a boy be given by his widowed mother, a right equal to that of the father is not effected by her donation; but by the boy's gift of himself: he ought therefore to be considered as a son selfgiven. It should be here remarked, that after the death of the father, his son's son, whose own father is dead, has a title to other paternal

ternal wealth, but is not acknowledged to have any right over the son, for no such right does exist over a son and a wife and this is reasonable. Thus much, say the lawyers, *whose opinion was first cited*, has been mentioned by way of illustration.

CULLUCA BHATTA holds, that the father and mother should make the gift with mutual consent. The reasoning, on which this is grounded, must be sought. But in fact that alone is proper. VICHESPATI MISRA likewise affirms, that adoption is only valid if the gift be jointly made by both parents.

THE mother being subject to the power of her husband, her property is devested by his gift, but it is not so in the case of wealth obtained through favour or the like, because there is no subjection in respect of such property. Thus, if a son be adopted by the husband, the wife has a secondary claim to that child, because property is common to the married pair (CCCCXV); and the line of the maternal grandfather is the ancestry of the adopter's father in law. This opinion authors deduce from the gloss delivered by CHANDESWARA on a text cited in a former book (Book III, Chap. I, v. LII 1) and from the gloss of CULLUCA BHATTA on the subsequent text (Book III, Chap. I, v. LII 2).

THE *Retnacara* contains the following gloss on the text of VASISHTHA (CCLXAHIII) *he, who means to adopt a son, must assemble his kinsmen, that the boy adopted as a son given, may thereafter obtain a share. Assembling his own heirs, he may receive, as his son by adoption, a boy not remotely allied to him, that is, nearly a kinsman to him, such is the son of his own maternal uncle or the like. this is intended for the latter ascertainment of the boy's name and class. On failure of near kinsmen, he may take one not nearly allied to him, for the name and primitive stock may be ascertained by other positive proof. the particle *eva* here bears the sense of "even". But, if doubt arise, that is, if it be doubted by one, who adopts a remote kinsman, whether he belong to the sacerdotal class or the like, let him treat the boy like a son by a Sudra, employing him only in the business of the house. "For through one he rescues many" because, through one son, the adopter saves*

saves many ancestors; therefore he should take for adoption a boy, whose class and family are not dubious.

VĀCHESPATI MISRA does not connect the terms "nor let a woman accept a son," with the words "unless with the assent of her lord;" because, even though she have the consent of her husband, a woman cannot adopt a son given; for she can make no adoption, since she is debarred from presenting an oblation to fire with the mysterious words from the Vēda, which oblation is a part of the ceremony. That is not the opinion of RAGHUNANDANA, VĀCHESPATI BHATTĀCHĀRYA, and the rest: it is not reasonable, that the principal act should be unperformed because an *unessential* part is prevented: since a woman could not make the *requisite* vow,\* (for she is prevented from reciting it in holy strains;) she would be incapable of performing a mere voluntary rite. Like the consecration and dismissal of a bull, the adoption of a son may be completed by an oblation to fire performed through the intervention of a Brāhmaṇa.† The separation of the terms "nor let a woman give or accept a son," from the words "unless with the assent of her lord,"‡ is thus set aside.

It should be remarked, that according to VĀCHESPATI MISRA, if a boy, who is given by his father and mother, consent to the donation, his adoption, as a son given, is valid; but an only son must not be given, even though he do consent. *No son must be given away against his will;* else, the mention of "assent of persons interested." (Book-II, Chap. IV, v. II) would be unmeaning. That opinion is disputable; for a boy not older than five years, being ignorant of civil affairs, cannot discriminate between assent and dissent. As for what authors affirm as the opinion of the commentator, that a father must give a son, who consents to it, but, if he be an only son, the father shall not give him, even though he do consent; that is also questionable: for, since he is not his own master, there is no argument to prove that one, who does consent, must be given.

\* *Bāvṛtī;* a vow or declaration, with which a solemn rite is begun. T.

+ To this argument the Mādīka school reply, that the dismissal of a bull cannot be undertaken by a woman. T.

‡ According to VĀCHESPATI MISRA, the text should be thus interpreted: "nor let a woman give a son unless with the assent of her lord, nor accept one in any circumstances." T.

THE ceremonial of adoption is now subjoined. Having given humble notice to the king, and, after making an oblation to fire with holy words from the *Véda*, giving gold and winter-corn in conformity with usage, let the adopter, ascertaining his name, family and class, in the presence of kinsmen, receive a boy, for whom the ceremony of tonsure and the like has not been performed, whose age does not exceed five years, and who is given by his father, or by his mother with the assent of her husband, provided that they have another son. Let him next perform the sacrifice on adopting a boy, (*putrēshṭi*). This *putrēshṭi* sacrifice, say experienced lawyers, must be performed by one, who maintains a consecrated fire; but by him, who does not maintain such a fire, an oblation must be made with the mysterious words from the *Véda*, as directed by VASISHT'HĀ. In fact, the oblation to fire with holy words from the *Véds*, which is directed by VASISHT'HĀ, should precede adoption; the *putrēshṭi* sacrifice, ordained in the *Cálicá purána*, should be performed after adoption. thus appears from the form of expression used in the texts ("having made an oblation, be may receive a son;" and, "having taken a boy five years old, be should perform a sacrifice\*.") At present some omit through laziness the sacrifice called *putrēshṭi*, in the same manner that the ceremony of combing a wife's tresses is not now practised. Thus authors direct the ceremonial of adoption.

IN the *Cálicá purána*, the texts above cited (CLXXXII and (CLXXXIII) are delivered, after premising the son of the body, the son of the wife, the son given and the son made. "Any other is called a slave" (CLXXXII 2); from this it appears, that the claim of the natural father to a son taken for adoption is annulled " Sons given and the rest" (*ibid*); the term, "and the rest," comprehends sons made by adoption and the like. Hence these must also be adopted under the age of five years, and the ceremony of tonsure and the like must not have been performed under the family name of the natural father: else the boy would be called a slave.

VÁ'CHESPATI BHATTA'CHA'RVA holds, that, since the text of the *Cálicá purára* declares void the adoption of a boy, for whom the ceremony of ton-

\* According to this gloss, "first," which occurs in the text (CLXXXIII) must be explained "first subsequent act, immediately after receiving the boy." T.

' sure has been performed under the family name of the natural father, the adoption of a boy, as a son given, who sprung from the same primitive stock with the adopter, is consequently invalid. Others do not respect that opinion, and they affirm, that the text (CLXXXII 1) implies a prohibition against adopting one, for whom the ceremony of tonsure has been performed, but there is no harm in taking the son of a near kinsman, and afterwards performing the ceremony of tonsure and the like. Their meaning is this, "under the family name" intends the declaration of that name, it must be also understood, that the natural father, *who has performed the ceremony*, was competent to do so, consequently, the family name of the father being only once proclaimed, (for both do not perform the ceremony,) the adoption of a boy, *who has not been shorn*, is not void.

A MAN dies after authorizing his wife to adopt a son, the ceremony of tonsure and the rest are subsequently performed by another person sprung from the same original stock with the natural father, still the adoption would be valid, because the ceremony of tonsure was not performed by a natural father competent to do so. It should not be objected, that adoption is void, if the triple set of oblations be offered beginning with the natural father, and proceeding regularly to the several ancestors, and the question of competency should not be examined. If the *fráddba* were casually omitted, there would be no defect in the adoption. On this point it is said, the text cited (CLXXXII 1) is intended to except the performance of the ceremony of tonsure previous to the acceptance of a son given, for after the adoption, the ceremony of tonsure performed by the natural father is void. It should not be objected, that the word tonsure does not signify the initiating ceremony, but the act of shaving the head and so forth. The word tonsure may with ease be made to signify that particular ceremony. It should not be objected, that in such a case *as were supposed*, the validity of adoption is denied by the letter of the law. There is no argument to support that opinion, for it has been already noticed, that acceptance in a certain form is the efficient cause of filiation. If a natural father, having given away his son, perform the initiating ceremony under his own family name, through mistake or through knavery, then, although the adoption be valid according to the system of law, the text (CLXXXII 2) declares void the relation of the son to the adopter.

who ignorantly omits to perform the ceremony of tonsure afresh, because it had been already performed. Such is the opinion of other lawyers.

SOME hold, that the mere act of shaving the head being *the principal part of the ceremony*, and the recital of holy texts by a competent person, and other formalities, being *unessential* parts of it, the ceremony of tonsure is complete by the act of shaving the head done by the natural father, although *unessential* parts of the ceremony fail. Then the rite of tonsure, though performed through mistake by one, who supposed the legitimate son of another to be his own, would be valid? That is admissible, say these authors. But their opinion is erroneous; for, the act of shaving the head being suggested by a precept not scriptural, \* the performance would be useless; but the person, to whom the precept relates, must be chiefly considered, since it is ordained, that the ceremony of shaving the head shall be performed by a competent person. It should not be argued, that this is a cogent precept, like that for approaching a wife in due season. Since compliance with a cogent precept has no reward, the important object of *initiating the boy into the sacerdotal class* would be unattained. Or, admitting it a cogent precept in respect of the ceremony of tonsure, still there can be no such cogency in the ceremony of feeding the child with rice; for, since the body cannot be supported without nourishment, the cogency could only be deduced from a maxim not scriptural. Hence the performance of the ceremony by a competent person being required in the case of one solemn rite, the same must be established in the case of another. VA'CHESPATI BH'ATTA'CHAR'YA observes in the new *Dvaita nirneya*, † that the ceremony of feeding the child with rice, being performed by a competent person, becomes *a step towards perfection or initiation*. Consequently, from the expression, "under the family name of the father," is deduced the invalidity of the adoption of a boy, for whom the ceremony of tonsure has been performed in a mode, which shows that he shares the primitive origin of his natural father, or which shows that he continues the race of his natural father, for the terms, "family distinguished by a name indicative of the primitive stock," may signify race or lineage.

\* Precepts are distinguished into such as are drawn from scripture, and such as are drawn from other sources. These again admit other subdivisions mentioned in a former note. T.

† The old *Dvaita nirneya* was composed by VA'CHESPATI MIRRA. T.

AMERA exhibits both terms (*gôtra* and *vansâ*) as signifying family. That a boy, for whom the ceremony of tonsure had been performed by his natural father with the omission of some *unessential* part, such as the treble set of oblations or the like, may be legally adopted, is thus disproved; and the adoption of a boy sprung from the same original stock is thus shown to be valid; the whole is consistent.

AT present, as some lawyers affirm, the adoption of a son accepted under the age of five years by men of mixed classes, who do not practise the ceremony of tonsure and the like, is valid, even though the shaving of the head be not in any mode effected.

THE adoption of a brother's son is valid. To this some object, that, since the text of MENU (CCLXXVI) describes a nephew as son of *bis cibilli:si uncle*, a further adoption as a son given is not valid; their own legitimate offspring, being given by the father and mother, to each other, does not thereby become a son given.

#### CCLXXVI.

**MENU:**—IF, among several brothers of the whole blood, one have a son born, MENU pronounces them all fathers of a male child by means of that son.

THE objection is ill founded; for CHANDE'SWARA, CULLU'CABHATTA, UDAYACARA, and the *Pârijâta*, explain the text, 'sons given and the rest should not be adopted, if there be a brother's son.' No one has said, that, if a brother's son be adopted through mistake, the adoption is void. As a daughter should not be appointed to raise up male issue, if there be a son begotten in lawful wedlock, but the appointment, if made, is valid; so, in the present case, if a nephew be adopted, the act is good in law. Admitting the validity of the adoption, shall not another nephew have an equal, or *at least* an unequal, share, since he also is considered as a son? No; for, YAJNYAWALAYA pronouncing a nephew to be unentitled to participation if there be a brother, the nephew must of course be considered as inferior to a son given or the like. It should not be argued, that, if no son begotten in lawful wedlock,

lock, nor wife, daughter, father and the rest, be living, the brother is entitled to the succession, and, on failure of him, the nephew and other heirs, such as sons given and the rest, have an equal or unequal title, according to the strength of their claims. The term "sons" being used in the plural number in a text formerly cited (CCXXIII) it appears, that sons of every description are entitled to the succession although a brother be left. Accordingly CULLU'CA-BHATTA observes, neither uterine brothers, nor parents, but, on failure of sons begotten in lawful wedlock, the son of a wife and other secondary sons are heirs to the deceased father; this is meant, for the right of the son begotten in lawful wedlock is deduced from another text (CCXV): but of one, who leaves no son properly or improperly so called, nor a wife nor a daughter, the father is heir; and, on failure of those and of the mother, the brothers shall take the inheritance. Why then is he called a son? Because he delivers the uncle from the hell called *put*; else, it would be improper to affirm, that sons given and the rest should not be adopted, if there be a brother's son: unless he delivered his uncle from the hell called *put*, there could be no sufficient reason for not making an adoption. Consequently he, who is adopted as a son given, has a right to possess the inheritance and perform obsequies, although there be another nephew. He becomes the son of the adopter under the rule of VISHNU (CLXXXV), which is expounded in the *Retnacara*, "he is son of him, to whom he is given by his father and mother." He claims the family of his adoptive father, under the text of MENU (CLXXXI).

" THE funeral cake follows the family and estate;" thus, because the family or estate departs, the funeral cake also departs: by saying, the funeral cake is extinct, his continuance of the lineage is denied. Hence this phrase, "the funeral cake follows the family and estate," does not signify, that wherever the family or estate goes, the funeral cake also goes; for, were it so, a military man, or other person, taking the inheritance of a priest, who leaves no heir sprung from the same primitive stock, nor a fellow student, nor any kinsman, would offer the funeral cake. Nor does it signify, that the funeral cake is followed by the family and estate; for, were it so, the adopted son would not take the inheritance, but the grandson in the female line would claim the estate and family of his maternal grandfather, like a son. The possible mis-

construction of the phrase is thus obviated. The same must be also understood in regard to the son of a wife: thus, if he belong to her husband alone, he shall not perform the obsequies of his natural father, since he does not share his estate and family; but the son of two fathers shall perform the obsequies of both.

ON this VA'CHESPATI BHATTA'CHA'RYA remarks, if the right be dubious, and there be no other argument deducible from precept, it is thus suggested, that the funeral cake shall not be offered, unless the party can claim either the family or the estate: in this instance it is questioned whether the natural or adoptive father have a right to the funeral cake, which must be offered by the son given; but it appears, that he shall not offer the funeral cake for his natural father, because he does not assume his family *name* nor *take* his estate. In a case where the right is not dubious, the funeral cake shall be offered by a daughter's son to his maternal grandfather, although he do not claim the estate and family; and, if there be a positive ordinance, the funeral cake may be offered to a stranger without taking his inheritance. Hence, the assumption either of the family name or estate is the ground of the claim; that failing, the son's right to offer a funeral cake to the natural parent fails: his participation in the family and estate of his adoptive father is a true ground of claim, since he may assert the right of offering a funeral cake to this parent. It follows, that the son given claims the family and estate of his adoptive father. The same remark is made by RAGHUNANDANA: in the *Udvába tattva*: it appears, that the son given shall claim the family and estate of his adoptive father alone, since he cannot assume the family name and estate of his natural parent, nor perform his obsequies, which are here signified by the terms "funeral cake" and "funeral oblation." RAGHUNANDANA explains the word *swadba*, an oblation to be eaten by progenitors; thus, of him, who has given away his son, that is, of the natural father, for this is the nearest term, the funeral cake, or oblation to be eaten by a progenitor, is extinct: it follows of course, that the funeral cake shall be offered to the adoptive father.

## CCLXXVII.

*Brahme purána* :—THOSE sons, who are adopted either as a son given,

given, a son selfgiven, a son made, by adoption, a son bought, or a son rejected, must ever be maintained with supplies of food and apparel :

2. THEY claim descent from a different primitive stock, are separate in the oblation of funeral cakes, and propagate a distinct race; on the birth of a child, or on the death of a kinsman, they partake of uncleanness for three days.\*

EVEN though the adopted son were a nephew, he partakes of uncleanness for three days *only*; for his original relation by the funeral cake, through his father and mother, being annulled by their gift, impurity for ten days is set aside; and uncleanness for three days arises from his connexion by the funeral cake in right of the adoption by the accepter: but, when a son is born to him, the adoptive father, his brothers, or any other kinsmen, all become impure for ten days by reason of the connexion by the funeral cake in right of birth. Consequently, when affinity by the funeral cake arises solely from the gift of the father or the like, the uncleanness lasts three days *only*. Such is the opinion of some lawyers. VACHESPATI BHATTACHARYA holds, that, when sons given and the rest have children born, or *themselves* decease, the impurity of the adoptive father, and of his father and other kinsmen, lasts three nights.

VISHNU and other lawgivers declare, that a son given is debarred from inheritance by the son of a twice married woman and the rest: but according to MENU and the rest, he excludes them. VISHNU and other lawgivers consider him as inferior, because he has no natural connexion through his mother; MENU and the rest deem him superior, because he was lawfully begotten, and MENU likewise holds, that the son of the wife, on the supposition of his transcendent virtue, excludes a son given. But VRISHPATI declares the inferiority of the son of a wife (CCH). He assigns a higher rank to the son of the body, and to the son of an appointed daughter, because they are lawfully begotten, and are connected with the father and grandfather.

\* The first part of this verse has been cited at v. CCLXXIV. On the subject of mooring, see MENU, Ch. 5, v. 58 and following.

through their mothers (CCXV). Consequently these are highest *in estimation*: "other sons" (CCXV), *who shall only be maintained*, are sons given and the rest: the son selfgiven is included in the same description with the son made by "adoption. If pure by class" (CCII); this is intended to forbid the adoption of sons inferior in class. "Irreproachable for their conduct;" this is intended to prevent the neglect of constant and occasional acts of religion. Consequently, the right of the son by a twice married woman and the rest, to the exclusion of the sons given, bought, or the like, which is propounded by other sages, alludes to sons so adopted, but, who are impure by class, and reproachable for their conduct. The text of the *Brabme purāna* (CCLXXVII 1) relates to the same case.

SHOULD not the son of a *Súdrá* wife be also contemned, for he is born of a woman unrighteously married (CXLV 2)? Still this son is not procreated by an adulterer: the marriage of his mother is alone unrighteous, not the procreation of the son; on the contrary, there would be sin in not approaching a married *Súdrá* in due season: the latter part of the text cited exhibits the period, when the sin of the marriage, not of procreation, is mature. But the son born of an unmarried woman of the servile class is *named in law* son by a *Súdrá*. He is mentioned by VASISHT'HĀ as sixth in rank, that is, sixth among the last six; or, in a word, twelfth.

A QUESTION here occurs for discussion. Can a son given be heir to a kinsman, or not? On this point some lawyers affirm, that the right of the son given to inherit from a kinsman, which is mentioned by MENU and BAUDHA'YANA, and his superior rank, as ordained by GO'TAMA, VRĪHASPATI and the *Cálicá purāna*, must be considered as relating to a son given, who is endowed with transcendent good qualities; for the expressions used in the text of VRĪHASPATI, "pure by class, and irreproachable for their conduct," denote transcendent good qualities: pure signifies absolved from all guilt; "by acts of religion, by alms, by study of scripture, and by sacrifice, men become pure, or are absolved from all guilt." A text of MRNU shows, that a son given, being endowed with every virtue, shall take the heritage.

## CCLXXVIII.

MENU :—OF the man, to whom a son has been given, adorned with every virtue, that son shall take the heritage, though brought from a different family.'

In like manner, the succession of a son given notwithstanding the claims of a son by a twicemarried woman and the rest, which is propounded by GO'TAMA, BAUDHA'YANA, and the *Cálicá purána*, must be explained from the concurrent import of the texts of MENU and VRÍHASPATI. It is accordingly declared in the *Brahme purána*, that sons given and the rest shall only be maintained (CCLXXVII); the omission of the son of a pregnant bride, in this text, is founded on the consideration of his affinity in right of birth. It should not be alleged, that the text of the *Brahme purána* relates to culpable sons of these descriptions. It is declared that, if culpable, even a son of the body does not take the heritage (CCLXIV): hence vicious sons, whether begotten in lawful wedlock or the like, or adopted as sons given and the rest, are excluded from participation; sons so adopted, being void of good qualities, shall have a maintenance; but such sons, being virtuous, shall take the inheritance of a father or of his kinsman. This is right, say these lawyers. But others contest this opinion, *drawing other inferences* from the subjoined text cited in the commentary on YA'JNYAWALCYA.

## CCLXXIX.

VRÍHASPATI, after premising the *Cali* age:—SONS of many different sorts, who were made by ancient sages, cannot now be adopted by modern men destitute of eminent powers.

Sons of many different sorts, namely sons of a wife and the rest, who were made by ancient sages, cannot now, in the *Cali* age, be adopted by modern men. Why? To this question he replies by an epithet, which contains the reason; "destitute of eminent powers." Consequently eminent power, arising from true piety, is stated as requisite to make him a son, who is begotten on a widow or on a married woman, whose husband is impotent: hence it

appears, that such a son ought alone to be considered as superior in rank, for the filiation of whom devotion is not particularly required. But the filiation of a son given in adoption being admitted by the *Aditya purâna* in the *Cali* age, eminent devotion is not required for the adoption of such a son, any more than for a son legally begotten. The son given, like the son begotten in lawful wedlock, is therefore superior to the rest.

## CCLXXX.

*Aditya purâna*:—THE filiation of any but a son legally begotten, or given in adoption by his parents, is a part of ancient law abrogated in the *Cali* age.

"VIRTUE", in the text of MENU (CCLXXVIII) signifies absence of vice; and "pure by class and irreproachable for their conduct," in the text of VRÎHASPATI (CCII), bears the same import, say these lawyers. That is inaccurate. Sons are of two sorts, *by birth and by adoption*; the son lawfully begotten and the rest are six sons properly so called; the son given and the rest are six sons improperly so denominated: the chief of each set, the son lawfully begotten and the son given in adoption, are approved in the *Cali* age. Accordingly VRÎHASPATI describes the appointed daughter as superior to the son given; their relative superiority and inferiority depend not on piety. This, which is quoted as the opinion of some lawyers, is accurate. But in fact, all sons, whether born of a twicemarried woman and the like, or given in adoption and so forth, are heirs to kinsmen, as well as to their own fathers; yet, if void of good qualities, they shall not take the heritage of a kinsman: however, they shall have the shares of the paternal estate allotted to them by the *Brâhma purâna* and other authorities, but some shall have a maintenance only; the due allotment shall be made as deduced from the several preceding texts. It appears to be the present practice for a son given in adoption, who performs the acts prescribed to his class, whether constant, occasional, or voluntary, such as sacrifice, consecration of pools, and so forth, to take the inheritance of his paternal uncles and the rest. This we hold to be proper.

"VIRTUE" in the text of MENU (CCLXXVIII) is explained by  
CHAN-

CHANDE'SWARA and others, science and good conduct. "irreproachable for their conduct," in the text of VRĪHASPĀTI (CCII), suggests one who is exact in the performance of every act of religion, "pure by class" excepts one who belongs to an inferior tribe. CHANDE'SWARA remarks on the expression "adorned with every virtue" that the rig' t of succession being suggested by filiation alone, "adorned with every virtue" is intended to show, that he shall take a share even though a son of the body be produced; but, if void of virtue, the son given shall have a simple maintenance. It is also proper to affirm, as intended by that expression, that sons given and others, being virtuous, are entitled to the inheritance and so forth, in preference to a son by a twicemarried woman, or the like, if he be destitute of good qualities, but, if all be destitute of good qualities, he, who is superior as nearest allied by birth, shall take a full share of the paternal estate, and the rest shall have the portions allotted to them in the *Brabmā purāna* and other works. The maintenance directed (CCLXXVII) must consist in the receipt of such a share. else, the seeming contradictions in the texts of MENU and others, and of YAJÑAWALCA and the rest could not be well reconciled. But some argue from the concurrent import of the text of DE'VALA (CXC 4), that the text of the *Brabmā purāna* also relates to sons given and the rest, who are inferior in class to their adoptive fathers. This brief exposition may suffice.

## S E C T I O N IX.

## O N T H E S O N B O U G H T.

HE is eighth according to YĀJNYAWALCYA; for, immediately after describing the seventh, or son given, he thus describes the son bought: "he, who is sold by them, (*by his father and mother,*) shall be considered as a son bought" (CCXXXVI). Although a son given and a son bought equally become the property of the adopter by the voluntary act of the original owner, he considers the son bought as inferior to the son given, because the sin of selling offspring is greater. Many legislators concur in deeming him inferior. The rules respecting him are similar to those concerning the son given. "And the rest," in the texts of the *Cálicá purána* (CLXXXII 2 and CLXXXIII), comprehend the son bought and the rest. VISHNU names him as ninth in rank (CLXXXV).

## CCXXXI.

BAUDHAYANA:—HE is called a son bought, who is received, for the sake of male issue, from the hands of his father and mother, or either of them, *after paying a price*.

"OR either of them;" if he be received from the hands of his mother, the consent of her husband must be required in the form, which has been mentioned in the preceding section. By the expression of VASISHT'HAA "let not a woman give a son" (CCLXXIII), which has a secondary sense without abandoning its primary signification, sale and the like is definitely intended; for, by parity of reasoning, there is occasion for the assent of the husband, since HA'RITA maintains, that a woman can claim no independence in the receipt or disposal of wealth. This is taken from the *Retnácarā*.

"AFTER paying a price" must be supplied; for that corresponds with the text of YĀJNYAWALCYA, since the verb *cri*, joined to the preposition *vi*, signifies delivery preceded by payment of a price, and is so employed in that text.

## CCLXXXII.

**MENU:**—HE is called a son bought, whom a man, for the sake of having a son *to perform his obsequies*, purchases from his father and mother, whether the boy be equal or unequal *to himself in good qualities*; *for in class all adopted sons must be equal.*

“ UNEQUAL;” not of the same class.

The *Párijátá.*

NEITHER should a child of inferior, nor one of superior class, be adopted as a son; the mention of “equal or unequal” must therefore relate to good qualities.

THE authors of the *Médbáti’bi* and *Pracásá,*

**CULLU’CAHATTÁ** quotes the following text of **YA’JNYAWALCYA;**

## CCLXXXIII.

**YA’JNYAWALCYA:**—THIS law (that on failure of the best, the next best shall offer the funeral cake and possess the heritage) has been propounded by me in respect of sons equal in class.

Thus, since the texts of both have the same purport, equal class is required in all cases excepting that of a son by a *Súdrá*. In like manner equality of class is also assumed in the case of a son by a twice married woman and the rest.

\* HE is called a son bought, who, being sold by his father and mother, is received for the sake of male issue, even though he be unequal in class, for the text of MENU expresses, “whether the son be equal or unequal.”

The *Dipacalíca.*

FOR the commentator thinks, that, if equal, in the definition of a son given as delivered by MENU (CCLXXV), signify “of the same class,” it

ought to signify the same in this place also; if there also it signify equal in good qualities, as it is expounded in the *Méd'bátit'bi*, that is not pertinent, when the good qualities of a child five years old must be examined. Were this interpretation admitted, would there not be an inconsistency with the text of **YA'JNYAWALCYA** (CCLXXXIII)? No; for that text may be expounded, "in respect of eleven sons, omitting the son bought." But, in fact, a child of a lower class may truly become a son by adoption; for **DÉVALA** declares, that sons of a lower tribe must live under him of *equal class* (CXC 4). The expression of **YA'JNYAWALCYA**, "in respect of sons equal in class," is intended to preserve the order of succession: for, if the son by a twice married woman, belong to an inferior tribe, and the son given, be superior to him, then the adopted son, *who is of superior class*, shall alone take the inheritance; but, if the son by a twice married woman were equal in class, he would be the legal heir.

THIS son bought is son of the purchaser and participates in his family and estate. He is superior to the son made by adoption and the rest. This shall be hereafter discussed. As for the text of **YAMA** (CXCI 4), which describes the son bought as fifth, that is, as fifth among the last six, or the eleventh of the twelve sons, that must be understood, when he is inferior in good qualities to the son rejected and the rest. The text of **VISHNU**, which places him ninth (CLXXXV), must be also adduced when the son of a pregnant bride is *more virtuous than he*. According to the *Brabme purána*, the son bought shall have a tenth part of such share as is allotted to the son of the body (CCXVII 3).

## SECTION X.

## ON THE SON MADE BY ADOPTION.\*

HE is ninth according to YAJÑAWALĀVA; for immediately after describing the eighth or son bought, he describes this son as one who is made by the adopter's own act (CCLXXXVI).

## CCLXXXIV.

BAUD'HAYANA:—HE, whom a man adopts, the boy being equal in class, and consenting to the adoption, is a son made.

ONE who consents; that is, one, who thus acquiesces, “ I will become his child; he shall take me as his own son.”

The *Retnācara.*

HE is inferior in rank to the son given and to the son bought, because he is not given away by his father and mother, to whom he belongs. In fact, the boy is bereft of father and mother, or is forsaken by them; or, both being living, they tacitly consent to the adoption, as a man acquiesces in another's enjoyment of his land. Or this son is as it were made of *cusa* grass and the like, endued with life by the power of devotion. If he do not consent to become son of the adopter, what shall be the consequence? The boy does not

\* Sons are thus adopted in *Murbilā*; the practice of adopting sons given by their parents was there abolished by SRI'DATTA, and PRATIHASTA, although the latter had been himself adopted in that manner. Their motive was, lest a child, already registered in one family, being again registered in another, a confusion of families and names should thence ensue. A son, adopted in the form so briefly noticed in the present section, does not lose his claim to his own family, nor assume the surname of his adoptive father: he merely performs obsequies and takes the inheritance. In *Gāra*, on the contrary, and in most other countries, sons are only adopted in the form discussed in the eighth section: but the *Cyānudīva* and other devotees, who lead a life of celibacy, buy children to adopt them in the mode which is briefly considered in the ninth section. The practice of appointing brothers to raise up male issue to deceased, impotent, or even absent husbands (see Sec. IV) prevails in *Oryā* (*Cdra-dīsa*). T. become

become his son. Or, as GANGA' consented to become daughter of JAHNU, so, if any one accept the relation of son to another, and the other admit him as such, then he becomes son of two fathers. His precedence above the son selfgiven and the rest supposes him endued with good qualities.

## CCLXXXV.

**MENU:**—He is considered as a son made or adopted, whom a man takes as his own son, the boy being equal in class, endued with filial virtues, acquainted with the merit of performing obsequies to his adopter, and with the sin of omitting them.

ACCORDING to CULLU'CABHATTA, "equal" or similar here signifies equal in class. It is explained in the *Médbátit'hi*, endued with qualities suitable to the family. "Acquainted with merit and with sin;" this is explained in the *Ratnácarā*, knowing the merit of performing obsequies to his father and mother, and the sin of omitting them: "endued with filial virtues," that is, with the virtues of obedience and the like.

BEING similar to a son given, he ought to be adopted under the age of five years, as ordained in the *Cálicá purána* (CLXXXIII). Nearly the whole form, directed for a son given, should be observed. It must be affirmed, that his future eminence in literature is conjectured from the ready apprehension and docility discovered by him at the age of five years. All this is vague and complimentary, for it is not requisite to filiation.

THIS son claims the estate and family of his adopter; the text of the *Brabme purána* (CCXVII 2), allotting a fifth part to the son made, supposes him endued with transcendent virtue; and so do the texts of MENU and the rest. This brief statement may suffice.

## SECTION XI.

## ON THE SON SELFGIVEN.

HE is tenth according to YAJNYAWALCYA; for immediately after describing the ninth or son made, he proceeds to describe the son selfgiven.

## CCLXXXVI.

YAJNYAWALCYA:—HE, who is sold by them (by his father and mother) shall be considered as a son bought; a son made is adopted by the act of the adopter himself, but he, who gives himself, is a son selfgiven; and one received while yet a foetus in the womb of his mother is called the son of a pregnant bride.

VISHNU says, “the tenth is a son selfgiven” (CLXXXV), to which it is added in the *Retnacara*, he is son of the man, to whom he gives himself.

## CCLXXXVII.

MENU:—HE, who has lost his parents, or been abandoned by them without just cause, and offers himself to a man as his son, is called a son selfgiven.

“ OFFERS himself;” gives himself, saying “ I am thy son.”

The *Retnacara*.

He is inferior to the son given and to the son bought, because he is only given by himself having acquired a secondary power over his own person. The son made by *adoption*, say some lawyers, is distinguished from this son, because he only acquiesces in the adoption, which is the act of another, and does not give himself. This son may, however, claim precedence above the son made. The *Brahma purâna* assigns a twelfth part to him.

## SECTION XII.

## ON THE SON OF A PREGNANT BRIDE.

HE is eleventh according to YĀJNYAWALCYA; for immediately after describing the tenth or son selfgiven, he thus describes this son; " and one received while yet a foetus in the womb of his mother is called the son of a pregnant bride" (CCLXXXVI): that is, one accepted while he remained in the womb of *his mother*; it is thus intimated, that he is son of him, who marries her. VISHNU says, "the seventh is the son of a pregnant bride; and the male child of a woman espoused while pregnant is son of the man, who marries her" (CLXXXV).

## CCLXXXVIII.

**MENU:**—IF a pregnant young woman marry, whether her pregnancy be known or unknown, the male child in her womb belongs to the bridegroom, and is called a son received with his bride.

THE author of the *Pracāśa* remarks, that the solemn rite of marriage does not take place, for a text declares, that holy nuptial texts are applied solely to virgins (Book IV, v. CLXVIII); but this woman is not a virgin, since she has had intercourse with man. On this subject ancient authors observe, that in this place "marry" relates to the form of marriage directed in the *At'harvan vēda*, which is ordained by scripture for women who are not virgins, and which is now practised by *Sūdras* of the lowest rank and by others. Since holy nuptial texts are confined to virgins, this term "marry" intends the oblation to fire on the fourth day and other rites celebrated without texts. Thus CHANDE'SWARA. But in fact, since the text expressed only "received while yet a foetus in the womb," acceptance alone is determinately meant; the requisites of *this filiation* do not extend to the oblation to fire:

fire: else, were that oblation casually omitted during pregnancy, the child would not be a son received with a bride, and might be supposed to become son of his maternal grandfather. But he is not son of his maternal grandfather: for, like ornaments and the like, the child was given away by him with his daughter. He is son of the bridegroom alone; not received *as such* in right of birth, for he is not produced from the seed of his legal father, nor from a receptacle *appertaining to that father at the time of procreation*; but becomes his son mediately, in consequence of acceptance, because the mother, who is owner of the child, is transferred to the bridegroom by the maternal grandfather's gift.

BEING deficient in good qualities, he is inferior to the son given and the rest. The offspring of an unmarried girl, considered as son of him, who subsequently marries her, may be also deemed inferior to that son. If the natural father be known, the child belongs to him alone. The *Brabme purána* (CCXVII 3) allots a ninth part to the son of a pregnant bride. This brief exposition may suffice.

## S E C T I O N X I I I .

*O N T H E S O N R E J E C T E D .*

HE is twelfth according to YĀJNYAWALCYA; for, immediately after describing the eleventh or son of a pregnant bride, he thus describes this son.

## CCLXXXIX.

YĀJNYAWALCYA :—He, who, being forsaken by *his natural parents*, is received by another, shall be considered as a son rejected.

VISHNU (CLXXXV) says, “the eleventh is the son rejected;” being forsaken by his father and mother, he becomes the son of him, by whom he is received. The text must be so supplied.

## CCXC.

VASISHT'HA :—THE fifth is the son rejected, whom a man receives as his son, the boy having been forsaken by his father and mother.

THE fifth rank is mentioned, as is observed in the *Rāmācāra*, meaning the fifth among the last six. Consequently he is eleventh in rank.

## CCXCI.

MENU :—A boy, whom a man receives as his own son, after he has been deserted without just cause by his parents, or by either of them, if one be dead, is called a son rejected.

“ DESERTED; ” abandoned. The desertion may be caused by utter inability

ability to support the child, or by some defect in him ; he must be received as a son, not merely received from a willingness to maintain the child.

The *Retnácarā*.

THE child is deserted with *some* such thoughts as these : " he is thrown away like the chaff of corn ; any man may take him or not as he pleases ; I have no occasion for this child."

THE son selfgiven is superior, because he is given by a secondary owner, namely himself ; but this son is inferior, because he was similar to a waif, not being then recognized as son of any man ; for, in this world, the finding of a waif is considered as a less perfect title than a gift. But in the case of a son made, the child being adopted by another although the father and mother were living, their right is forfeited by neglect, like the right of a man to a chattel adversely enjoyed by another. As in the case of land, that neglect is an act of will, which may be expressed in these words, " this land is possessed by another ; let him enjoy it ; and let it become his absolute property," so in the case of a son, the act of the will may be thus expressed, " this man adopts him for his son ; let him do so ; and let the child become his son." Consequently, the principal owner tacitly consenting, the son made by adoption is therefore superior to one self-given and to him, who is rejected by his natural parents : in the case of a son rejected, the owner assents to the loss of his own right, but not to the substituted right of another ; in the case of a son made, he also assents to the substituted right of another. Were it so, what difference would there be between a son given and a son made, since the owner equally assents in both instances to the loss of his own right and to the substituted right of another ? Neglect is the foundation of the substituted right to a son made, but gift is the foundation of such right to a son given : the difference between them is this ; donation is an act of the will contemplating the transfer of property to another, and which may be thus expressed, " let this become his property ;" neglect is an act of the will contemplating property arising from occupancy, and which may be thus expressed, " let this, which is occupied by him, be lost to me, and become his by occupancy." The neglect may be of a different nature, solely contemplating the loss of right, and which may

may be thus expressed, " let my right be forfeited :" this is the foundation of the substituted right to a son rejected. In the former instance of neglect, property vests in the actual occupant *alone*, in the last instance, it subsequently vests in any occupant whomsoever.

THE *Brabme purâna* (CCXVII 2) allots a seventh part to the son rejected. This brief exposition may suffice.

## SECTION XIV.

## ON THE SON BY A 'SUDRA.'

HE is not particularly noticed by YĀJNYAWALCYA. Since "any how" in the text of VISHNU, ("the twelfth is a son any how produced" v. CLXXXV), is expounded in the *Retnácarā* 'by a Súdrá woman married or 'unmarried,' the son of a Súdrá wife is also considered as thirteenth in rank. His share of the inheritance has indeed been propounded by YĀJNYAWALCYA (CXLII). The concurrent import of the texts of MENU and VASISHT'HA is the foundation, on which the term "any how produced" is restricted to the son procreated on a Súdrá woman.

THE text, cited in a former chapter (CLXXVII), is inserted by MENU in the place where sons of twelve sorts are defined, immediately after describing eleven sons. *Párasava* (a living corpse) is a name for the son of a Bráhmaṇa by a Súdrá woman. It is thus explained in the *Retnácarā*; "though fulfilling his duty" (*párayan*), that is conferring some benefit on his supposed father, "he is even as a corpse," because the benefit is inconsiderable. The word *párayan* may also signify "living."

CCXCII.

VASISHT'HA :—THE sixth is the son by a Súdrá.

SIXTH here relates to the last six.

The *Retnácarā*.

CCXCIII.

BAUDHA'YANA :—A son, begotten through lust on a Súdrá woman by the chief of twice born men, is called a living corpse (*párasava*).

The

The share of a son by a married 'Súdrá had been propounded by Mēnu, YĀJÑYAWĀLCYA and others. Mēnu (CLXXVII) and VISHNU (CLXXXV) now speak of a son by an unmarried 'Súdrá. Accordingly Mēnu, immediately after this text (CLXXVII),\* notices the participation of a son begotten by a man of the servile class on his female slave (CLXXVI), "man of the priestly class" in this text signifies a *Brahmana*, *Cshatriya*, or *Kshaya*. But YĀJÑYAWĀLCYA has not allotted any share to the son of a twice-born man by a female slave. The share of such a son, who is consequently of a different class from his father and far inferior in rank to other sons (CCLXXXIII), must be deduced from the texts of other sages. The law is thus explained, and we hold this reasonable. JÍMU'TAVĀ'HANA<sup>†</sup> also concedes to this opinion.

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\* Mēnu, Chap. 9, v. 178 and 179

## SECTION XV.

## ON THE ADOPTION OF SONS.

## CCXCIV.

*Smṛiti*, cited in the *Retnācara*.—Sons by women of the servile class, though they be *Súdras* and slaves, are in some instances *deemed the legal sons* of priests; and so they are, of kings consumed by curses and even doomed to perish:

2. And sometimes they are *considered as the legal issue* of men who seek wealth, or practise warfare.

The supposed impossibility of their becoming *legal sons* of these men is denied.

The *Retnācara*.

HENCE, if a man be destitute of other offspring, his child by a woman of the servile class must be acknowledged as his son.

## CCXCV.

If there be a son of the body, or a son of an appointed daughter,

2. The son of a wife and the rest of eleven sons must be considered as belonging to distinct families, and as perpetuating a separate race;
3. All such sons shall ever perform obsequies and other rites for those fathers, like slaves, or like men of the slave class.

If there be a son of the body, or if there be a son of an appointed daughter, then the son of a wife and the rest merely propagate a family such is the construction. "Like slaves," in the form which should be practised by a slave, or by a man of the servile class.

The *Retnacara*

### CCXCVI.

A SON of concealed birth, the son of an unmarried woman, the son received with a bride; the son by a Sudra,

2. And the son by a twice married woman, are five who are shunned by men of the commercial class, through apprehension of a fine to be paid to the king, all the rest are likewise heirs of twice-born men.

IT is thus declared possible, that men of the commercial class may have sons considered as such in a secondary point of view

The *Retnacara*

"Likewise" alludes to the sons improperly so called It is thus declared possible, as is observed in the *Retnacara*, that a subsidiary son may be adopted by a priest, a soldier, or a merchant.

### CCXCVII.

MEN of the servile class, acting as slaves, living on food supplied by another, and subject in their persons to the dominion of a master, can in no instance have a son:

2. The male child, who is begotten by such a slave, becomes himself a slave.

IT is a notion intimated in the *Retnacara*, that, since the text of *MEN* (Book III, v. LII) must be considered as declaratory of the subjection of a slave to the will of his master, he is subject to his control even in the adoption of a son, and that the child is in like manner subject to the dominion of his master.

CCXCVIII.

## CCXCVIII.

MENU:—ON failure of the best, *and* of the *next best, among those twelve sons*, let the inferior in order take the heritage; but, if there be many of equal rank, let all be sharers of the estate.

AMONG the sons abovementioned, *namely* the son of a wife and the rest, *all* being virtuous, *let the best take the heritage*; on failure of virtuous children, a worse son, deficient in good qualities, is entitled to the succession. But, if there be many of various descriptions, such as the son of a wife and the rest, who are *all* endued with equal good qualities, they are all equal sharers of the estate.

“SIMILAR” is explained in the *Retnacara* equal in good qualities or in unessential properties. The author’s notion of the purport of the text is the same. Consequently MENU intends, that the rule of succession to heritage and the like should be drawn from the different degrees of virtue, without attending to the difference of the form in which a son is adopted. This is also the opinion of other legislators; but they have described a particular order on the supposition of proportionate good qualities. Thus some explain the text. According to others, “on failure of the best, and of the next best,” that is, of the first mentioned respectively, the inferior in order, or next mentioned, succeed to the heritage. Thus YAJNYAWALCYA directs, that, “on failure of those first mentioned, the next in order shall give the funeral cake and claim the heritage” (CLXXXIX).

## CCXCIX.

VISHNU:—AMONG these the first in order is preferable; he alone shall take the heritage, and shall support the rest.

## CCC.

NA’REDA:—THE first in order are severally considered as eldest or superior, the last are respectively deemed inferior; on the death of the father, they succeed in order to his estate;

2. On failure of the first, and next in rank, he, who is *inferior in the next degree*, shall take the inheritance.

CULLU'CABHATTA also says the same : he thus expounds the last half of the text of MENU (CCXCVIII), ‘if there be many sons of the same description, such as sons by a twice married woman or the like, they shall all take and divide the heritage.’ He explains similar, “equal in rank,” being sons of a twice married woman or the like. In the gloss of the *Retnácarā*, the term, “unnecessary properties,” alludes, say these other lawyers, to the rank, as sons by a twice married woman or the like. According to this opinion the son of the wife and the rest are never equal to the son of the body. That opinion only is accurate. Accordingly the *Brabme purána* assigns the whole estate to the son of the body though last born (CCXVII) : that is, if partition be made by a father, he shall give to his son born in lawful wedlock the full share directed under that head ; he shall give the third part of such a share to the son of the wife, and reserve for himself as much as he pleases, or a double share (for there is a difference of opinion on that point) : in like manner, he shall give the fourth part of a share to the son of an appointed daughter, and their due allotments to the rest. If there be many sons, namely a son of the wife, a son of the body, an appointed daughter and so forth, let him so distribute the estate, that the son of the body may have twice as much as the son of the wife, thrice as much as the appointed daughter, and so forth, and the father himself have twice as much as his son begotten in lawful wedlock. The natural distribution has been propounded by YĀJÑAWALCYA and others. The form of partition, expressly mentioned in the discussion on sons of twelve descriptions, must be observed : but, if there be a difference of good and bad qualities, the form of distribution, directed in the *Brabme purána* and the rest must be adopted.

IT is recorded in *Purána*s and other works, that a king, having purchased a boy named SUNAHSE'P'HĀ, who was sold by his father, attempted to sacrifice him to the divinity ; but the boy, being saved from death by divine interposition, became son of the sage VISWAMITRA : in what form did SUNAHSE'P'HĀ become his son ; for he was not a son given, since the

boy was not bestowed by his father on VISWA'MITRA ? He was a son selfgiven ; for a boy, having given himself as a son, when the right of his father and mother was annulled, by their leaving him to die, or by any other means, the definition of a son selfgiven is applicable to him. This brief explanation may suffice ; to expatiate would be vain.

AMONG the twelve descriptions of sons, begotten in lawful wedlock and the rest, any others, but the son of the body and the son given, are forbidden in the *Cali* age. Thus the *Aditya purâna*, premising, "the filiation of any, but a son lawfully begotten or given in adoption by his parents" (CCLXXX), proceeds, " These parts of ancient law were abrogated by wise legislators, as the cases arose at the beginning of the *Cali* age, with an intent of securing mankind from evil," that is, *with an intent of preventing the guilt of mankind*; the term bears the sense of prevention, as in the phrase " smoke made as a precaution against gnats;" for that is one of the senses ascribed to this term in the dictionary of AMERA. The meaning therefore is, mankind would be culpable, if the practice of raising up a son on the wife of a kinsman and so forth were now followed. So VÄCHES-PATI BHATTÄCHÄRYA expounds the phrase: but others explain the terms, 'for the sake of preserving mankind'; the word used signifies 'intend,' as in the phrase, " wood intended for a post to be erected as a memorial of a sacrifice performed." Consequently the meaning is this; mankind would perish, if the practice of raising up a son on the wife of a kinsman and so forth were now followed. Formerly men proceeded, without amorous dalliance, *to procreate issue* on a brother's wife, (who is similar to a mother or a daughter in law,) with the sole view of raising up offspring to a brother; now men being governed by lust and grovelling appetites, and their passions being excited by simply looking on the face of a woman in private, they would repeatedly approach a brother's widow under pretence of raising up issue to him; mankind would be thus culpable, and perish through the prevalence of sin. In like manner sufficient reasons may be assigned for the prohibition of appointing a daughter and so forth. Again, by the term "powers" in the text of VRÎHASPATI (CCLXXIX).is meant, not only devotion, but the consequence of it, namely command over the senses.

AMONG these twelve descriptions of sons, we must *only* now admit the rules concerning a son given in adoption and one legally begotten. The law concerning the rest has been inserted to complete that part of the book; as well as for the use of those, who, not having seen such *prohibitory* texts, admit the filiation of other sons. Thus, in the country of *O'dra* (*Orissa*), it is still the practice with some people to raise up issue on the wife of a brother.

## CCCI.

**MENU:**— THESE eleven sons (the son of the wife, and the rest as enumerated) are allowed by wise legislators to be substitutes *in order* for sons of the body, for the sake of preventing a failure of obsequies.

HENCE a son given and the like should only be adopted on the possibility of a failure of obsequies, not if they can be *otherwise* performed. If one, who has a son legally begotten, adopt a son given, is the adoption valid or not? and what occasion is there for its validity, since the obsequies must be performed by the son legally begotten? There is occasion for the purpose of removing the doubt whether the obsequies shall be performed by the son given, if the son of the body afterwards die. To this some reply, that, sons given and the rest being described as substitutes, and substitution being only admitted on the failure of the principal, the adoption of the son given is void, because there was not at that time a failure of the principal; and if the son of the body afterwards die, the obsequies shall be performed by the wife or by a collateral heir. That is wrong; for the son given, not the adoption of him, is described as a substitute; there is no difficulty in saying that, on failure of the principal, or son legally begotten, the son given shall act as such. Accordingly SRI D'HARA SWAMI, in his gloss on a verse of the *Bhāgavata* (CCXVI), quotes a text of law on the benefit arising from a multitude of sons, to explain the motive for desiring many children, when a subsidiary son is adopted even though a principal one be living: "Many sons are to be desired, that some one of them may travel to *Gayā*."

THE adoption of a son given, although a son of the body be living, being thus valid, he shall have a third part as his share, in the same manner with a son given, subsequently

subsequently to whose adoption a son of the body was born (CXC). "Heirs" (CXC 3); that is, entitled to a full share. "Shall have as their share one third of the property" (CXC 4); that is, they shall have as a share one third part of that, which is receivable by the son legally begotten. What shall be the share? shall the son given receive four, or three, *suvernas* out of twelve which compose the share received by the son of the body? or shall the son of the body receive twice as much as is received by the son given? To this it is answered, if it be the meaning of the law, that he shall take one third part out of the share which is received by the son legally begotten, then what would be the consequence, if there be many such? the son given would receive an excessive sum, if he took a third part from each. Nor shall he take one share out of the collected wealth; for though single, he would not receive a *full* third part, and the legitimate sons would have more than their due, *allotments*. Neither is the second supposition right; for, were it so, he would take a quarter, *instead of a third*. Thus the last supposition must be admitted. It may be illustrated in this manner: in the case of partition made by a father, according to the opinion of JI'MU'TA-YA'HANA and the rest, let two sons legally begotten take eight *suvernas* each out of thirty-six inherited from a paternal grandfather, let the father take sixteen *suvernas* and the son given four. The meaning of the text is, that an adopted son shall have a third part of the share appertaining to a son legally begotten. Some hold, that in a partition of hereditary property made by a father, who has one son given and two sons begotten in lawful wedlock, the whole estate shall be divided into thirteen parts, of which six belong to the father, three to each of the two sons legally begotten, and one to the son given: according to these lawyers the meaning of the text is, that an adopted son shall have a third part of such a share, as is receivable by a son begotten in lawful wedlock. That is wrong; for it is not deduced from the phrase "shall have as their share one third part," that they shall have a share equal to one third part of *what is received by the son legally begotten*. As for the exposition, that an adopted son shall take one third part of such a share, as is receivable by this son in right of his legitimacy; that is wrong, for there would be none to take the remaining two thirds. If the remaining two thirds were again divided, nothing would prevent a second remainder of two thirds; and that cannot be the sense of the text.

LAWYERS justify the text of the *Brabme purāna* (CCLXXVII), as relating to the same subject with the phrase " those of a lower class must live under him, with a provision of clothes and food only " {CXC 4}. That is wrong; for were it so, the particular mention of sons given and so forth would not be pertinent. Consequently that text relates to a son given and others deficient in virtue, and it shows, that, if any one of six sons, namely the son of the body and the rest; exist, he has a right to take a full share and to perform obsequies, and the son given or other adopted son shall have a third part for his maintenance.

SINCE the text of MENU (CCLXXI) must relate solely to the son given, or other child adopted while a son legally begotten exists, for it is of course declared by the text of DÉVALA, that an adopted son shall have a third part if a son of the body be afterwards produced, does it not follow, that the adoption of a son given, being made by one who has a son legally begotten, is invalid? CULLU'CABHATTA<sup>1</sup> has also remarked that a son of the wife, and the rest, ought not to be obtained, if there be a son of the body or an appointed daughter: does not this text relate to the same subject? It should not be argued, that, like the rule, " common property may not be given away by any one parceller, and wealth necessary for the support of the family may not be aliened even by a single owner," this text is intended to forbid such adoption by one who has a son, not to declare the adoption void. Since it is demonstrably right to establish a moral offence in depriving the family of support, sin, not the invalidity of the gift, is thence deduced; but the text of MENU contains nothing prohibitory against such an adoption: for sons given and the rest, who are produced from the manhood of others, that is, others than their adoptive father, and from the wife of another, (for the expression is merely illustrative;) these sons, it is said, being produced from another origin than the adoptive father's own seed and field, are *in truth* sons of him, from whose manhood and wife they sprang, not sons of the adopter: it follows therefore, that the adoption is void.

If this be alleged, the answer is, still the sense of the text would be irrelevant: why should not property arise in a son given to one who has male issue, as well as in land given to him? And, if property do arise, why should

should he not be a son capable of inheriting the estate and performing obsequies? It makes no difference whether the son of the body be born before or after the adoption." Sacred story records, that MENU appointed his daughter to raise up a son, although he had male issue. It should not be argued, that she merely propagated the family. Filiation being valid if she perpetuate the race, nothing can bar the right of succession vested by divine power. Accordingly it is observed in the *Retnácarā* on the last part of the text above cited, "they belong in truth to the father, from whose manhood they severally sprang and to no other" (CCLXXI), that, their claim as principals being denied, their claim as substitutes is hinted; "they are principal sons of no other;" the text must be so supplied. It should not be objected, that the preceding text (CCCI) contains a vain repetition. It completes the sense. What then is the claim of one who is a substitute for a son? It consists in the right of performing the offices incumbent on a son, if there be no principal one. Admitting this inference from the opinion delivered in the *Retnácarā*, still adoption is prohibited according to the opinion of CULLU'CABHATTA, who holds that this ought not to be followed as a practice which is justified. It should not be argued, that by so acting a moral offence would be committed. There is no argument, on which a moral consequence can be established, when a temporal effect may ensue. But here the intention of the precept is to forbid adoption then only, when there is no motive for it; for the benefit desired, namely deliverance from the hell called *put*, is obtained without adopting a son given, and through him, therefore, that purpose is not effected: but one, who desires numerous issue for other purposes besides deliverance from the hell called *put*, may adopt a son given and the rest, although he have one legally begotten. SRI'D'HARA SWAMI and others have said as much. The *Retnácarā* and Párijáta expressing, that a son given and the rest should not be adopted if there be a brother's son, it must be understood that the prohibition concerns one who merely desires male issue for the sake of deliverance from the hell called *put*. This justifies the fact recorded in the *Bbárata* and other works, that PA'NDU, having other male issue, accepted of BHU'TA, ARJUNA and other sons of his wife; and he did so, although he had nephews. It should not be objected, that brother's son positively intends the son of an uterine brother only; and "brothers of the whole blood," in the text of MENU

MENU (CCLXXVI), signifies brothers by both the same parents. The dual number is not supposed in an apposition of this form, unless there be special grounds of implication. It should not be argued, that the proceeding of PANDU, who was acquainted with the legal prohibition, is a ground of such implication. His conduct is declared to have been influenced by the desire of having a son endued with strength, and one skilled in jurisprudence and philosophy. VĀCHESPATI BHĀTTA'CHĀRYA also admits the adoption of a son given, although there be a brother's son. CULLU'CA-BHĀTTA, however, expounds "brothers of the whole blood" brothers by the same father and mother. MENU and VISHNU declare, that a son delivers his father from the hell called *put*.

## CCCI.

MENU and VISHNU:— SINCE the son (*trāyate*) delivers his father from the hell named *put*, he was, therefore, called *putra* by BRAHMA himself.

## CCCII.

HĀRITA:— A CERTAIN hell is called *put*; and he, who is destitute of male issue, is there tormented: a son is therefore called *putra*, because he delivers his father from that region of horrour.

## CCCIV.

VRIHASPATI:— BECAUSE a son delivers his father from the hell called *put*, even by the sight of his countenance therefore is a man solicitous for the birth of a son.

debt, by him he procures immortality, through him he joyfully becomes exonerated from every debt to living progenitors.

## CCCVI.

SANC'HA and LIC'HITA, and PAIT'HI'NASI:—By a son, however produced, a father prospers; through his oblation of funeral cakes, he becomes exonerated from debt to his progenitors.

## CCCVII.

HA'RI'TA:—He, who has a son pure, capable and virtuous in <sup>the first period of life,</sup> and perfected by the correction of his own defects, transports his ancestors over the abyss of death.

## CCCVIII.

SANC'HA and LIC'HITA:—THE perpetual support of a consecrated fire and the like, the scriptures, and sacrifices rewarded with ample gratuities, do not procure the sixteenth part of the benefit arising from the birth of an eldest son.

2. HEAVEN is attained through the means of him, who is celebrated as the fire of a son and of a grandson, and whose many children and himself, while living, had completed the study of scripture and the performance of sacrifice.

WITH whom scripture and sacrifice is not incomplete; whose study of the *Veda* and performance of sacrifice fail not; and that, if he have many sons: such is the construction. It consequently appears to be a benefit arising from numerous issue, that many sons and the father himself fail not in the study of scripture and performance of sacrifice. "Many sons are to be desired, that some one of many may travel to *Gayi*." Hence sons of various describers may be adopted by one, who desires numerous offspring.

## CCCIX.

SANC'HA and LIC'HITA, VISHNU and HARITA:—By a son, a man obtains victory over all people; by a son's son, he enjoys immortality; and, afterwards, by the son of that grandson, he reaches the solar abode.\*

## CCCX.

YAJNYAWALCYA:—THROUGH a son, a son's son, and the son of a grandson, the father or ancestor obtains *bliss in other worlds, immortality, and heaven*; but the double set of oblations and the funeral cake are offered by a man's own son and other descendants, whether principal or subsidiary.†

HEAVEN signifies the solar abode ; for the import is the same with that of the preceding text.

## CCCXI.

VASISHT'HA:—The endless abodes are allotted to those who leave male issue; it is recorded, that “heaven is not for him, who leaves no male progeny.” Enemies therefore pronounce *this curse*, “may they be childless and become evil spirits.” The want of male issue is the great cause of destruction; therefore is a son desired.

IT is declared in the *Veda*, that heaven is not for him, who leaves no male issue. It consequently appears, that celestial bliss is attained through a son; and that is made evident by the text of YAJNYAWALCYA. “The endless abodes &c.” since the purport is the same, they are allotted to those who have grandsons; the word “son” here signifies offspring in general. It is thus declared, that sons and other male descendants are most desirable. The sage proceeds to show eternity enjoyed through the means of a son: childless men become invisible giants or demons; certainly that is a great evil, by which the name of giant or demon is affixed to manes: such is the implied

\* MENU, chapter 9, v. 137. cited at v. XI

† The first hemistich has been cited at v. CIV.

sense according to the *Retnácarā*. “Enemies, &c.” this curse is pronounced by them.

## CCCXII.

*Smrīti*, quoted in the *Retnácarā*:—A son of any description should be anxiously adopted by one, who has no male issue, for the sake of the funeral cake, water, and solemn rites, and for the celebrity of his name.

2. FATHERS desire sons, dreading lest they fall to a region of horrour, and reflecting, whosoever among these sons shall go as a pilgrim to *Gayá* will convey us beyond those places of horrour.

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It follows, that all manes are carried beyond the regions of horrour in consequence only of obsequies performed at *Gayá*.

## CCCXIII.

“A son will consecrate a bull at my funeral, will perform obsequies at *Gayá*, will make sacrifices, and consecrate pools; he will defend me in old age, and will daily offer the *srāddha* after my decease.”

In the former text a pilgrimage to *Gayá* was alone mentioned; in this text obsequies are also specified; there is not consequently any vain repetition. “Daily;” every day, that is, every new moon. This alludes to the day of the patriarchs: a month of mortals, says AMERA, is a day and a night of the patriarchs. Or it may allude to obsequies constantly or daily performed.